

SOLICITATION, OFFER AND AWARD				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING		PAGE 1 OF 88 PAGES		
2. CONTRACT NO. W912DY-04-D-0013-P00001		3. SOLICITATION NO. DACA87-02-R-0011		4. TYPE OF SOLICITATION [] SEALED BID (IFB) [X] NEGOTIATED (RFP)		5. DATE ISSUED 19 Dec 2002		6. REQUISITION/PURCHASE NO.		
7. ISSUED BY US ARMY ENGINEERING & SUPPORT CENTER CEHNC-CT 4820 UNIVERSITY SQUARE HUNTSVILLE AL 35816-1822 CODE W912DY TEL: SEE "ADMINISTERED BY" FAX:				8. ADDRESS OFFER TO (If other than Item 7) See Item 7 CODE TEL: FAX:						
NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".										
SOLICITATION										
9. Sealed offers in original and <u>1</u> copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in <u>4820 Univ. Sq. Hsv. AL</u> until <u>02:00 PM</u> local time <u>03 Mar 2003</u> (Hour) (Date) CAUTION - LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-1. All offers are subject to all terms and conditions contained in this solicitation.										
10. FOR INFORMATION CALL:		A. NAME C. WILLIAM BORDERS		B. TELEPHONE (Include area code) (NO COLLECT CALLS) 256-895-1114		C. E-MAIL ADDRESS Charles.W.Borders@hnd01.usace.army.mil				
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OFFER (Must be fully completed by offeror)										
NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.										
12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.										
13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)										
14. ACKNOWLEDGMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated):					AMENDMENT NO.		DATE		AMENDMENT NO.	
15A. NAME AND ADDRESS OF OFFEROR		CODE 1CU20		FACILITY		16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)				
		EMC ENGINEERS INC CARL LUNDSTROM 960 NORTHPOINT PARKWAY SUITE 600 ALPHARETTA GA 30005 4134								
15B. TELEPHONE NO (Include area code) (770)-752-0362			15C. CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE - ENTER SUCH ADDRESS IN SCHEDULE. <input type="checkbox"/>			17. SIGNATURE		18. OFFER DATE		
AWARD (To be completed by Government)										
19. ACCEPTED AS TO ITEMS NUMBERED 0001, 0010, 0011				20. AMOUNT \$2,000,000.00 EST		21. ACCOUNTING AND APPROPRIATION				
22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304(c)() <input type="checkbox"/> 41 U.S.C. 253(c)()						23. SUBMIT INVOICES TO ADDRESS SHOWN IN (4 copies unless otherwise specified)		ITEM		
24. ADMINISTERED BY (If other than Item 7) See Item 7 CODE						25. PAYMENT WILL BE MADE BY CODE				
26. NAME OF CONTRACTING OFFICER (Type or print) KENNETH E GODDARD TEL: 256-895-1127 EMAIL: K						27. UNITED STATES OF AMERICA (Signature of Contracting Officer)		28. AWARD DATE 02-Jun-2004		
IMPORTANT - Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.										

Section B - Supplies or Services and Prices

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

(Revision 1, dated 14 January 2005)

B.1 TYPE OF CONTRACT:

The intention of this contract is primarily for the procurement and installation of Utility Monitoring and Controls Systems (UMCS); i.e. energy management/building automation systems. It is the intention of the U.S. Army Engineering and Support Center, Huntsville (CEHNC) to award firm fixed price performance based Indefinite Quantity/Indefinite Delivery type contract(s) pursuant to FAR 16.504. Individual unilateral or bilateral task orders will be issued on a firm fixed price or time and material basis per clause 52.242-4683 Schedule H. The contract will be for five years. The authorized ordering activity for issuance of the delivery orders is CEHNC.

B.2 TECHNICAL REQUIREMENT:

The Contractor, as an independent Contractor and not an agent of the Government, shall on the terms and conditions more particularly described herein, provide all necessary hardware, software, management, labor, equipment, material, and facilities except as specified herein to be furnished by the Government, and shall do all that which is necessary or incidental, e.g. construction and/or AE design, to the satisfactory and timely performance of the following work set forth below:

PROCUREMENT AND INSTALLATION OF UTILITY MONITORING AND CONTROL SYSTEM (UMCS), SUPERVISORY CONTROL AND DATA ACQUISITION (SCADA) SYSTEMS, AND OTHER AUTOMATED CONTROL SYSTEMS COMPONENTS INCLUDING FIRE ALARM AND LIFE SAFETY, ELECTRONIC SECURITY SYSTEMS AND HEATING, VENTILATING, AND AIR CONDITIONING SYSTEMS AT GOVERNMENT FACILITIES WORLDWIDE AND AT MUNICIPALITIES AND EDUCATION FACILITIES, AND MAINTENANCE/SERVICE OF SYSTEMS COMPONENTS.

B.3 COST DETERMINATION

Prices quoted for each Contract Line Item Number (CLIN) and Sub-Contract Line Item Number (S/CLIN) shall include all hardware, software, equipment, components, materials, internal wiring, etc, and the cost of labor to install that item separately listed for labor and materials as detailed on the CLIN Excel Spread Sheets, in accordance with that item's specifications and the standard details, and individual task order. Performance of work under these CLINs shall be IAW the applicable clauses set forth herein. Labor pricing and performance of all CLINs shall be IAW the applicable clauses set forth in solicitation/contract. Compliance with applicable labor standards and laws shall be the responsibility of the offeror.

Separate CLINs are provided to price all other installation materials, installation labor, and other labor to account for these categories which are not included in the standard detail, i.e., name plates, conduit, wire, engineering associated with special investigations, and other materials and labor required but not included in the standard details. All costs associated with individual task order drawings and specifications shall be delineated and placed in appropriate CLIN item such as special equipment, testing, engineering, and other labor. The contractor is fully responsible for

properly applying the project specifications as they govern all materials, software, labor, and installation methods as shown in the standard details. In case of conflict between the standard details and any national, state, or local codes, the applicable codes shall take precedence, and shall be included in the unit price.

Each UMCS Standard Installation Detail listed as CLIN and S/CLINs 11 includes the cost of materials and labor as required on the detail and the cost of the wire terminations. The cost of the wire, conduit, and Field Equipment Panels (FEP) is covered elsewhere under their respective CLIN items.

Cumulative costs associated with each Task Order shall be entered in CLIN XX99. The Government will purchase the system in CLIN XX99, ie; 0099, 2099, 3099, 4099, which represents the total of all elements and activities.

The Governments expects the offeror to propose most favored customer pricing. Any trade discounts should be represented in the offeror's price.

In fairness to the contractor, the Government will adjust rates, labor, overhead, General and Administration (G&A) in accordance with DCAA audited rates for individual contractors. The escalation factor for contract years 2 through 5 is for components not covered by DCAA annual rate adjustments. This adjustment will be accomplished annually on the anniversary date of the contract award. Profit will remain consistent during the contract performance period as originally proposed, negotiated, and accepted.

Subcontractors and Consultants and other direct costs required in support of specified tasks directly related to the Statement of Work shall be shown as a material cost. All subcontracting rates, which can be identified at time of proposal must be included in your unit pricing and shall be named in your proposal.

Application software shall be priced as resident and executing in the operator workstation or FEP in accordance with the requirements parts of the relevant specifications.

The Government is under no obligation to issue any orders against contract(s) resulting from this solicitation in excess of the minimum contract obligation. The Government guarantees to order a minimum of \$500,000 or two (2) percent of the estimate ceiling price of the contract, whichever is the lesser amount of the minimum guarantees of the five-year contract. The ceiling price for this contracting action is \$300,000,000, which is inclusive of all multi-awards made under this solicitation. The awards to unrestricted offerors (small or large businesses) have a ceiling price of \$270,000,000.00, with no one contractor receiving more than \$200,000,000.00. The awards to restricted offerors (small businesses) have ceiling prices as follows: **UMCS/HVAC that two (2) Small Business ID/IQ contracts will be awarded, with an estimated combined total capacity of \$2 million \$5 million dollars over the five (5) years.** The Government reserves the right to make delayed contract awards pending receipt of minimum guarantees stated above. The \$300,000,000 is the Government's best estimate of anticipated work that will be forth coming over the 5 year contract ordering period.

All cost data shall be entered on the EXCEL electronic spreadsheets, attachments 18,19,20, 21, and shall be submitted back to the Government on a separate CD-ROM to ensure integrity of data.

The pricing of CLINs 0011 and all other firm fixed price CLINs as applicable shall consist of material and labor that includes all related contractor and subcontractors' costs regardless of disciplines; i.e., project managers, projects engineers, superintendents, qa/qc managers, technicians, typists, welders, pipefitters, electricians, mechanics and all other necessary labor for trenching, backfilling, painting, patching, cutting of pipe, concrete work, etc to furnish and install the hardware and software for each CLIN and as required for each Standard Installation Detail. The only exceptions are cost for wire and conduit and the cost for programming, setup, mapping, etc. of field equipment panels (NCUs, UPCs, UCs) which are unpriced CLINs specific to each task order. The wire and conduit shall be priced under the other labor and other material CLINs and the programming, setup, mapping, etc. for the field equipment panels shall be priced under the appropriate unpriced CLINs on a task order by task order basis.

52.215-4203 PRE-PROPOSAL CONFERENCE

- a. A pre-proposal conference will be held in connection with the Request for Proposals (RFP) on 16 January 2003 at:

The University Of Alabama in Huntsville, Alabama
Wilson Hall Room 127

The web site <http://www.uah.edu/News/map/index.html> will provide a map of the Campus to locate Wilson Hall.

The following list of accommodations are provided as a service and does not represent a recommendation by the Government of these accomendations.

SAMPLING OF AVAILABLE HOTEL ACCOMMODATIONS HUNTSVILLE

Executive Lodge Suite Hotel
1535 Sparkman Drive N.W.
800-248-4722 256-830-8600

LaQuinta Inns and Suites
3141 University Drive N.W.
256-533-0756

Holiday Inn Research Park
5903 University Drive N.W.
256-830-0600

Holiday Inn Space Center
3810 University Drive N.W.
256-837-7171

Holiday Inn Express
3808 University Drive N.W.
256-721-1000

Country Inns & Suites
4880 University Drive N.W.
800-456-4000 256-837-4070

Courtyard by Marriott
4804 University Drive N.W.
800-321-2211 256-837-1400

Residence Inn by Marriott
4020 Independence Drive N.W.
205-837-8907

Tom Bevill Conference Center and Hotel
550 Sparkman Drive N.W.
256-721-9428

Marriott Hotel
5 Tranquility Base
800-228-9290 256-830-2222

NOTE: Accommodations are also available from the University Housing (contact: Juanita Owen, (256) 824-7776). North Campus Residence Hall opened in September 2002. Room rates are \$17.50, which includes bed linens, pillow, blanket, towels, and local phone service.

Additional information on Huntsville area and accommodations can be obtained from Huntsville's web site at:

<http://www.ci.huntsville.al.us>

Technical and administrative personnel will be on hand to discuss the requirement and answer questions. In order to expedite the discussions, prospective offerors are requested to submit written questions to the Contracting Officer not later than 10 January 2003 specifying the section and paragraph of the RFP for which clarification is desired. However, questions that cannot be submitted in time to reach the Contracting Officer on the aforementioned date may be submitted to Contracting Officer at the conference. ALL QUESTIONS MUST BE SUBMITTED IN WRITING. An amendment of the conference proceedings, including questions and answers, will be provided to contractors on the Plan Holder's List.

b. Offerors who plan to have representation at this conference are requested to furnish the names and titles of their representatives to:

U.S. Army Engineering and Support Center
Contracting Officer CT-P Borders
P.O. Box 1600
Huntsville, AL 35807-4301

OVERNITE 4802 University Square
Huntsville AL. 35816-1822

This information is required no later than close of business 10 January 2003. Offerors are requested to limit their representatives to no more than 5 individuals to attend the pre-proposal conference.

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0001		1	Lump Sum	\$2,000,000.00	\$2,000,000.00 EST

UMCS Integrated System

FFP

This is a Firm Fixed Price for providing and installing UMCS and HVAC equipment as specified in each task order, with related modification, by incorporation of CLINs 0001 through 0099 with associated SubCLINs.

MAX
NET AMT

\$2,000,000.00 (EST.)

Funded Amount

\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0005		UNDEFINED		UNDEFINED	UNDEFINED
	RESERVED FFP				

MAX
NET AMT

UNDEFINED

Funded Amount

\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0006		UNDEFINED		UNDEFINED	UNDEFINED
	RESERVED				
	FFP				
				MAX	UNDEFINED
				NET AMT	
	Funded Amount				\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0007	RESERVED FFP	UNDEFINED		UNDEFINED	UNDEFINED
				MAX NET AMT	UNDEFINED
Funded Amount					\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0008	RESERVED FFP	UNDEFINED		UNDEFINED	UNDEFINED

MAX NET AMT	UNDEFINED
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Funded Amount	\$0.00
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FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0009	RESERVED FFP	UNDEFINED		UNDEFINED	UNDEFINED

MAX NET AMT	UNDEFINED
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Funded Amount	\$0.00
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FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0010		UNDEFINED	Labor Hours	UNDEFINED	UNDEFINED
	Labor Hours				
	T&M				
	This is a Time and Material for providing Labor (Man Hours) in accordance with CLINS 0024, 2024, 3024, 4024 and associated SubCLINs.				
				TOT MAX PRICE	\$0.00 EST
				CEILING PRICE	
	Funded Amount				\$0.00

FOB: Destination

ITEM NO	SUPPLIES/SERVICES	MAX QUANTITY	UNIT	UNIT PRICE	MAX AMOUNT
0011		UNDEFINED	Lump Sum	UNDEFINED	UNDEFINED
	Material				
	T&M				
	This is a Time and Material for providing material for all CLINS except CLINS 0024, 2024, 3024, 4024 and their associated sub CLINs.				
				TOT MAX PRICE	\$0.00
				CEILING PRICE	
	Funded Amount				\$0.00

FOB: Destination

Section C - Descriptions and Specifications

STATEMENT OF WORK

1.0 Background. The U. S. Army Engineer & Support Center, Huntsville (USAESCH) will provide direct support to Government agencies for the procurement and installation of Utility Monitoring and Control Systems, Heating, Venting and Air Conditioning Systems, Supervisory Control and Data Acquisition Systems, and other Automated Control Systems including fire alarm and life safety, and electronic security systems worldwide. This work will require the contractor to have a current capability to respond to multiple requests for work at diverse locations, both within the continental United States (CONUS) and outside the continental United States (OCONUS).

2.0 Objectives. This Request for Proposal (RFP) is for providing and installing of Utility Monitoring and Control Systems, Heating, Ventilating and Air Conditioning Systems, Supervisory Control and Data Acquisition Systems, and other Automated Control Systems including Fire Alarm and Life Safety, and Electronic Security Systems. The Government may award multiple contracts. The objective of this effort is to provide a current capability to provide or upgrade the above systems on Government facilities worldwide. These systems will provide heating, ventilating, and air conditioning and monitoring and control of utilities at Government facilities, municipalities, and educational institutions to meet specific installation requirements. The effort will be accomplished by individual task orders awarded over a period of five years.

3.0 Requirements. The contractor shall perform work by individual Task Order. All tasks to be completed under this contract shall be performed in accordance with the applicable provisions of the US Army Corps of Engineers Safety and Health Requirements Manual, EM385-1-1. Each Task Order will identify the nature and scope of the work required. The work will be associated with Utility Monitoring and Control Systems, Supervisory Control and Data Acquisition Systems, and other similar Control and Monitoring Systems and heating, ventilating, and air conditioning systems in accordance with applicable Contract Specifications, Standard Installation Details, site specific requirements, and regulatory requirements. Heating, ventilating, and air conditioning systems will include, as a minimum, central plant equipment and systems (e.g., chillers, boilers, cooling towers), distribution systems (e.g., duct work, chilled water piping, hot water piping, drain piping), and unitary heating and cooling equipment (e.g., unitary heat pumps, unitary air conditioners). The work will include design of systems as defined in each task order. Specific task areas or functions to be performed are listed below:

Providing Accident Prevention Plan. An Accident Prevention Plan shall be submitted for approval by the Government, within 10 Days after the Post Award Meeting or within 15 days prior to the contractor beginning work on site, whichever is sooner. The Accident Prevention Plan shall be prepared in accordance with the requirements of EM385-1-1, Safety and Health Requirements Manual. The contractor shall identify the person responsible for safety compliance on each project in the Accident Prevention Plan.

Developing equipment installation engineering plans. Prepare equipment installation plans in accordance with (IAW) requirements of specifications and drawings.

Providing hardware and software. All hardware and software shall be provided IAW the requirements of the specifications, drawings, and Contract Data Requirements List (CDRL) DD form 1423.

Installing hardware and software. All hardware and software shall be installed IAW original software developer's published procedures and documentation, and as required by the specifications and standard details.

Database: Develop the database for the system, with the required features stated in the specifications. Use engineering survey data design drawings, manufacturer's data, and equipment list in conjunction with industry standards to develop the data base to handle not only current points installed, but to handle at least the requirements of each task order.

Provide graphics for the system IAW specification using data form drawings, engineering surveys, and manufacturer's data.

Test and checkout. Perform all factory, performance and endurance testing IAW the applicable sections of the referenced sections of the specifications in the task orders.

Performing ancillary work required to support equipment installation. Perform engineering survey to develop or verify design drawings and equipment lists. Develop a report indicating any differences, and equipment installation compatibility requirements with the new system. (Participate in post-award conference at the site prior to installation work).

Providing and installing data transmission equipment. Install all data transmission equipment IAW specifications, drawings, and manufacturer's published documentation. Comply with all requirements of the Directorate of Information Management (DOIM) or its equivalent authority related to installation of new data transmission equipment.

Interfacing with existing data transmission equipment. Interface all data transmission equipment IAW specifications, drawings and manufacturer's published documentation. Comply with all requirements of the DOIM related to interface with the existing communication system.

Determining compatibility and interfacing of new equipment with existing equipment. Perform an existing conditions survey to validate the quantities of system equipment and verify existing conditions. Provide a written report stating all compatibility requirements.

Providing mechanical equipment. All equipment, including software, shall be provided IAW the requirements of the specifications, drawings, and CDRLs.

Installing mechanical equipment. All equipment, including software, shall be installed IAW the manufacturer's recommended procedures and as specified.

Preparing system and component documentation. Prepare system installation engineering drawings, instrumentation installation drawings, wiring diagrams, procedures for field installation of all equipment, and system testing procedures, as defined in Technical Instructions (TI) 811-12.

Providing operation and maintenance manuals. All manuals shall be provided as required by the applicable sections of specifications and CDRLs.

Providing training. Training shall be provided as required by the applicable sections of specifications.

Warranting systems. The system, all its components, subsystems, data transmission system, and all contractor-furnished software shall be covered by warranty IAW the contract.

Maintaining and servicing systems. Provide all maintenance and service of the system as specified.

Preparing after-action and other reports. Progress reports, minutes of all meetings, confirmation notice for telephone calls, field inspection reports, calibration reports and the contractor shall prepare installation reports. Copies of all such documents shall be furnished, within 5 working days, to the government after each specific action.

Providing as-built installation drawings. All drawings furnished by the contractor shall be in the latest version of Microstation or the latest version of AutoCAD as determined by individual task order. Final As-Built drawings on "C" size mylar, and copies on CD shall be furnished as required by the CDRLs. All drawings shall be delivered within 30 days after written acceptance of the system by the government.

Providing equipment installation engineering drawings. All drawings related to installation and assembly of the computers, field equipment panels, data transmission equipment, interfaces, instrumentation, and all other equipment shall be provided IAW the specifications and CDRLs.

Performing special engineering services and studies as defined in individual task order.

4.0 Task Order.

4.1 The contractor shall perform specific work by task order. Each task order will require the contractor to perform some or all of the specific task areas identified above. Individual task orders may add additional technical requirements as necessary to define the work, including Specifications, Technical Manuals, Engineer Instructions, and Engineer Technical Letters. The performance period will be negotiated and determined for each individual task order.

4.2 A task order request for proposal will be submitted to the contractor. It is the intention that task orders will be issued electronically. The contractor shall review the request for proposal and prepare a task order proposal which includes, as applicable, the following:

- a. Project schedules with critical paths identified
- b. Manpower required
- c. Material costs
- d. Travel by calendar dates
- e. Meetings by calendar dates
- f. Equipment quantities and deliveries by calendar dates
- g. Document deliveries by calendar dates
- h. Testing by calendar dates
- i. Training by calendar dates
- j. Detailed overall one-line block diagram of system
- k. Detailed and summarized cost breakdown, including subcontractors' pricing
- l. Software integration of new field equipment into a central system
- m. Software integration of existing field equipment into a central system

The contractor shall submit the task order proposal for Government review. After review and subsequent negotiation of the proposal, the Government may then issue a task order, which will describe the work mutually agreed to be performed by the contractor.

5.0 Information Support and Documentation. All required technical information and data shall be delivered in accordance with the requirements, quantities, and schedules set forth in the Contract Data Requirements List (CDRL), DD Form 1423, and Section J, or as otherwise specified or required. The requirements for contents and detail of operation and maintenance manuals, testing documentation (including level and detail) shall be as described in applicable Contract Specifications and shall be further clarified in individual task order statements of work.

6.0 Continuation and Completion of Work.

6.1 The contractor shall pursue the work under the direction of a responsible representative approved by the Contracting Officer. The company officer or representative shall be designated as contractor project manager and shall be responsible for the complete coordination of all work under this contract. All work shall be accomplished with adequate internal controls and review procedures, which will be put in place by the contractor to eliminate conflicts, errors and omissions, and ensure technical accuracy. The Government may elect to provide third party technical inspection.

6.2 The contractor shall warrant all products and services provided under each task order for a period of one year from the date of Government acceptance, or the offeror's standard commercial warranty period, whichever is greater. The contractor shall provide the necessary support required to maintain the warranty.

6.3 The Program Manager must have experience related to the system procured, a minimum of five years experience in program management, and must have successfully managed at least one program comparable in complexity and magnitude to this program. Other key positions must be staffed with qualified personnel who have a least three years experience in the functional areas for which they are proposed.

6.4 Any change proposed by the contractor to key personnel assignments for the individual task orders shall be subject to approval by the Government. No changes shall take place until after written approval by the Government.

7.0 Contract Security Classification Specification. The contractor shall have or be capable of obtaining a facility clearance through SECRET. The contractor shall have a classified storage facility as required for each individual task order. All Key personnel designated for classified work on the task orders must meet the same security requirement of that specific installation. The cost to obtain these requirements is the responsibility of the contractor.

8.0 Compliance with Attachments. The contractor shall comply with the requirements of the Statement of Work and exhibits and documents attached or referenced.

9.0 Performance Measures. Performance Measures for each task order will be agreed before award depending on the nature of services and or work required and conforming to FAR 37.602-1. The applicable performance measures/metrics, as later refined in task orders, may include, but are not limited to, number of customer complaints, utility cost/savings per month, response times, average daily scheduled downtime, number of unanticipated downtime hours, percentage of emergency calls, safety incidents, progress reporting, and meeting task order technical and schedule requirements. The Government may also employ non-monetary incentives/disincentives, as authorized by FAR 37.602-4. An example of a positive incentive is recognition of excellent contractor performance on the CEHNC website and the Huntsville Center's Newsletter. An example of a negative incentive is the reporting of substandard contractor performance to the Director of Contracting or the Huntsville Center Commander.

Section D - Packaging and Marking

LOCAL CLAUSES SCHEDULE D

52.212-4003 REVIEW OF DELIVERABLES

The deliverables and drafts of deliverables will be reviewed by the Government for content and adequacy. Written comments will be provided to the Contractor by the Contracting Officer or his authorized representative on HND Form 7 within the time specified on the applicable DD Form 1423 attached hereto. Contractor will annotate the comment sheet to indicate action taken or to be taken and return annotated comment sheets to the Contracting Officer.

STATEMENT OF SUBMITTAL

Submittals:

- b. Submittals are required deliverables mutually agreed upon for each task order. These submittals have established delivery schedules as specified in the task order's statement of work performance milestones. Failure to comply with these delivery schedules makes the contractor delinquent in performance and subject to owing the Government some form of consideration. Such tardiness will be annotated in the contractor's past performance evaluation. The following adjustment to submitting documentation has been implemented to remedy the aforementioned discrepancies.
- c. The contractor shall comply with the DD1423, Contract Data Requirement List (CDRL), as to the requiring activities and the number of copies of the submittal to be provided. The Corps of Engineers Huntsville Center will receive the official submittal item with ENG-4025. The contractor will insert the Huntsville Center Project Engineer's name and phone in the Remarks block of the 4025. This will be sent to the attention of:

U.S. Army Engineering and Support Center, Huntsville
CEHNC-ED-IS-SP (ARRINGTON)
PO Box 1600
Huntsville, AL 35807-4301

Overnite: 4820 University Square
Huntsville, AL 35816-1822

- d. The contractor shall provide Huntsville Center with one sample facsimile cover sheet properly filled in for return of annotated 4025. The contractor shall provide one sample mailing label for return of marked-up submittals.
- e. It is acceptable for the contractor to simultaneously submit a duplicate submittal to the Huntsville Center Project Engineer at the engineer's option.

Section E - Inspection and Acceptance

LOCAL CLAUSES

52.246-4006 INSPECTION OF SERVICES - FIXED PRICE (APR 1984)

- a. Definitions. "Services," as used in this clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
- b. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- c. The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all time and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- d. If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by performance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the services performed.

INSPECTION AND ACCEPTANCE TERMS

Supplies/services will be inspected/accepted at:

CLIN	INSPECT AT	INSPECT BY	ACCEPT AT	ACCEPT BY
0001	N/A	N/A	N/A	N/A
0005	N/A	N/A	N/A	N/A
0006	N/A	N/A	N/A	Government
0007	N/A	N/A	N/A	Government
0008	N/A	N/A	N/A	Government
0009	N/A	N/A	N/A	Government
0010	N/A	N/A	N/A	N/A
0011	N/A	N/A	N/A	N/A

CLAUSES INCORPORATED BY REFERENCE

52.246-4	Inspection Of Services--Fixed Price	AUG 1996
52.246-6	Inspection--Time-And-Material And Labor-Hour	MAY 2001
52.246-12	Inspection of Construction	AUG 1996
52.246-13	Inspection--Dismantling, Demolition, or Removal of Improvements	AUG 1996
52.246-16	Responsibility For Supplies	APR 1984

Section F - Deliveries or Performance

LOCAL CLAUSES

52.212-4628 ORDERING AND PERFORMANCE PERIODS

The term for issuing orders under this contract shall commence upon award of the contract and end 1825 days from that date. Performance periods will be stated in each order. Notwithstanding the expiration of the ordering period, the contractor shall complete performance and deliveries of all orders or modifications thereto which are issued prior to 2400 hour midnight, of the expiration date of the contract provided such performance does not exceed 1095 days.

(End of clause)

52.212-4603 DELIVERABLE DISTRIBUTION

The specified number of deliverables listed on the DD 1423, Contract Requirements Data List are the minimum number required. Each order will state specific numbers and addresses which are in addition to those stated on the DD Form 1423. The contractor will submit the additional copies directly to the addresses provided in each individual order.

(End of clause)

DELIVERY INFORMATION

CLIN	DELIVERY DATE	QUANTITY	SHIP TO ADDRESS	UIC
0001	N/A	N/A	N/A	N/A
0005	N/A	N/A	N/A	N/A
0006	N/A	N/A	N/A	N/A
0007	N/A	N/A	N/A	N/A
0008	N/A	N/A	N/A	N/A
0009	N/A	N/A	N/A	N/A
0010	N/A	N/A	N/A	N/A
0011	N/A	N/A	N/A	N/A

CLAUSES INCORPORATED BY REFERENCE

52.242-15

Stop-Work Order

AUG 1989

52.247-34

F.O.B. Destination

NOV 1991

Section G - Contract Administration Data

PAYMENT SCHEDULE MILESTONES

CONTRACT MILESTONES WITH PAYMENT SCHEDULE
SECTION 01011

1.1 The events set forth below are required to be performed sequentially, and only in the order as listed. No work shall be accepted, nor will it be paid for, unless and until all prior events have been successfully completed. Written official notice from the Contracting Officer to the Contractor advising of the successful completion and approval for payment of an event shall establish the completion date for that event and shall constitute permission for the Contractor to begin the next event in the sequence.

1.1.1 In particular, the Contractor shall not begin any installation work at the job site until after Government approval of the completion of Events A and B. This restriction also expressly prohibits the delivery of any equipment to the job site.

1.1.2 With Regard to Payments:

a. For those portions of the contract requirements that are part of Milestone Event C, the Government will make payments monthly as the work proceeds. Payments shall be made against invoices submitted by the contractor and approved by the contracting officer. The Contractor shall provide data in support of his estimates that are acceptable to the contracting officer.

b. Payment will not be authorized for:

(1) Equipment, installation, or testing effort which is part of any other contract requirement event (i.e., an event other than C).

(2) Any material, equipment, installation, or assembly for which tentative approval has not yet been obtained.

(3) Any material, equipment, assembly, supplies, etc., which has only been delivered to and held in storage at the project site.

(4) Any material, equipment, assembly, supplies, etc., which has been delivered to the Contractor at a location other than the project site.

(5) Software development or revision efforts, testing, or for completed software of any category or classification.

c. When the payments against Milestone Event C reaches an amount which is equal to sixty (60) percent of the total awarded contract amount, not including options, no additional payments shall be made.

d. All payments for events after Milestone Event C shall be payable only upon the successful completion of those remaining events.

1.2 The Contractor and the Government agree that payments to be made for this contract shall be based upon satisfactory completion by the Contractor of the milestones established in the following milestone schedule:

MILESTONE EVENT	PAYMENT AT COMPLETION OF EVENT (% OF CONTRACT PRICE)
A. Government approval of Accident Prevention Plan and Group I Technical Data Package; Government acceptance of Group II Technical Data Package.	10
B. Government approval of Group III Technical Data Package; Completion of Factory Test.	10
C. All required construction and equipment installation activities; Acceptance of Contractor's Field Testing report; Government approval of Group IV Technical Data Package; Completion of Performance Verification Test; Completion of Operator's Training I and II	60
f. Completion of Endurance Test; Completion of Operator's Training III; Maintenance Training; and Specialized Maintenance Training. Government approval of Group V Technical Data Package; Delivery and acceptance of all software as specified.	10
E. Completion of Operator Training IV; Government approval of Group VI Technical Data Package	5
F. Completion of Opposite Season Test Delivery and acceptance of revisions to software and Operation and Maintenance (O&M) manuals following the completion of Opposite Season Testing; Delivery and acceptance of all other documentation and training required by the contract documents.	5
Total:	100
G. Maintenance and Service Contract.	Not Applicable

OMBUSMAN

Task Order Contract and Delivery Order Ombudsman

The Head of Contracting Activity is required to appoint a task delivery order ombudsman per FAR 16.505(b)(4). For all USACE contracting activities the ombudsman contact can be located at the following web site address:

<http://www.hnd.usace.army.mil>.

(Go to "Doing Business with HNC", then "Directorate of Contracting", and "Vendor Information" to locate the ombudsman information.)

Ombudsman may be involved in all aspects of awarding task and delivery order contracts, the authority is limited to issues pertaining to the awarding of tasks and delivery orders under multiple award contracts. Ombudsman may have the authority to: a) Review complaints from contractors awarded multiple award contracts that have not been afforded a fair opportunity; b) Require that the contracting officer take corrective action regarding the complaint; c) If the contracting officer doesn't agree with the ombudsman, the matter will be decided by the PARC. Multiple award task and delivery order contracts shall

52.0232-4011 Electronic Funds Transfer (EFT) Information

All contracts shall utilize the Electronic Funds Transfer method of payment, by 1 January 1999.

The following web site will provide information and the authorized form for EFT payments by the paying activity located in Millington, TN. <http://www.hnd.usace.army.mil> (Go to Doing Business with HNC, Directorate of Contracting, Vendor Information)

52.242-4003 CONTRACT ADMINISTRATION OFFICE

The contract administration office for this contract is located at the following address:

Commander
US Army Engineering & Support Center, Huntsville
ATTN: William Borders
PO Box 1600 CT-P
Huntsville, AL 35807-4301
Phone: 256-895-1114

52.242-4004 CONTRACTING OFFICER

The Contracting Officer for this contract is:

Kenneth Goddard
PO Box 1600 CT-P
Huntsville, AL 35807-4301
Phone: 256-895-1114
(End of clause)

52.242-4206 BILLING/PAYMENT OFFICE

Payment will be made in accordance with clause, entitled PAYMENTS. Any prompt payment discount offered shall apply to withheld monies computed from date amount becomes eligible for payment. The Contractor shall submit all invoices/vouchers for payment to:

Invoices:

- (a) New invoices will be submitted electronically as pdf files via email to katherine.d.sparks@usace.army.mil ~~<mailto:katherine.d.sparks@usace.army.mil>~~
- (b) The subject line of the email shall have the contract number and the word INVOICE inserted. Other communication should be in the text portion of the email.
- (c) The contractor can submit ENG-4025, Transmittal of Shop Drawings, Equipment, Data, Material Samples or Manufacture's Certificate Compliance, signed off by the customer electronically (email of acceptance of 4025 by appropriate customer representative). The ENG-4025 can be accessed via Internet at <http://www.usace.army.mil/inet/usace-docs/forms>.
- (d) The contractor's invoice package shall have a SF-1034, Public Voucher for Purchase and Services Other Than Personal, cover sheet. The contractor will fill in the following blocks of the SF-1034: Voucher (invoice) Number, Date Voucher Prepared, Contract/Task Order/Modification Numbers, Payee Name and Address, Articles or Service (give brief description the project i.e. Fort XXX and technical data package I), and Total amount of invoice. The contractor shall use its standard format for invoicing with the 1034 as the cover sheet. The SF-1034 can be accessed via internet at <http://forms.psc.gov/forms/SF/sf.html>
- (e) This modification supercedes the invoice procedures as defined in the contract Section G, paragraph G.6, 52.0242-4419, Disbursement/Billing Office Address.

(End of clause)

52.242-4603 PROJECT MANAGER

The Project Manager on this contract and your primary point of contact is:

Ken Arrington
U.S. Army Engineering and Support Center, Huntsville
ATTN: CEHNC-IS-SP (ARRINGTON)
P.O. Box 1600 (4820 University Square)
Huntsville, Alabama 35807-4301
Phone 256-895-1753

52.243-4401 MODIFICATIONS - PRICE BREAKDOWN

The contractor is required in connection with any proposals or claims for contract modifications to furnish a price breakdown, itemized as required by the Contracting Officer and furnished by the date specified by the Contracting Officer. Detailed cost estimates are required in the proposals.

The following information is in connection with the required detailed proposals which must be negotiated with the Contracting Officer or his elements within the proposal shall be related to the task elements. Task elements shall be either prime contractor cost elements or subcontractor cost elements; the Contractor's proposal shall clearly separate prime costs from subcontractor costs.

Prime contractor's costs and subcontractor's costs will be separate into direct and indirect costs. Direct costs shall be further classified into the following three basic categories: (1) plant and equipment; (2) labor; and (3) material and supplies.

Plant and equipment costs shall be based on an actual use time and standby time. The contractor shall show the estimated times and rate structure for each plant and equipment type. The pricing method used for any inter-

organizational transfers of equipment shall be fully explained. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect as of the time work was performed shall apply. For the purpose of determination of the hourly rates to be applied under this contract, working conditions shall be considered to be average unless otherwise determined by the Contracting Officer. Rates for equipment not in the schedule will be computed by the Contractor using the formulas in the schedule. Where applicable, rates in the schedule may be used for unlisted equipment of comparable horsepower and auxiliary features.

Labor costs shall be based on a breakdown of labor rates by appropriate categories showing manhours. The labor rate will include the base, fringes, subsistence, and Contractor's taxes and insurance, and shall be substantiated by copies of certified payrolls.

Materials and supply costs shall be included in the various task elements. The basis of pricing and allocating costs shall be provided. Pricing shall be based on vendor quotes, invoice prices, etc. Consolidated material purchases with actual material and supplies used in subsequent (replenishing stocked inventory) or future task elements shall be allocated appropriately.

Indirect costs shall be those costs not classified as direct costs. The method of computation and application of indirect costs shall be provided.

g. Impacts to the projects, if any, must be stated in writing and justified. Impacts should be depicted as clearly separate or concurrent tasks elements and fully substantiate the cost proposal.

52.242-4028 IDENTIFICATION OF CORRESPONDENCE

All correspondence and data submitted by the Contractor under this contract shall reference the Contract and Task Order Numbers.

Section H - Special Contract Requirements

52.242-4614 METHOD OF ORDERING

52.0242-4614 METHOD OF ORDERING - (UNILATERAL AND BILATERAL)

a. Supplies and services to be furnished under this contract shall be ordered by the issuance of both bilateral and unilateral orders using DD Form 1155. Task order types can be firm fixed price, and time and materials.

b. The Government shall be under no obligation to issue any particular number or types of orders and no liability to the contractor shall be incurred in the event that a certain number or types of orders are not issued; however, the Government guarantees a minimum ordering amount of 2% of contract award or \$500,000.00 whichever is less. (NOTE: This is a minimum ordering amount; NOT a minimum payment. Contractor shall only be entitled to its anticipated profit for an order of this amount and provable standby costs in the event that the Government does not issue an order up to the value of the minimum ordering guarantee.) The contractor shall furnish to the Government, when and if ordered, the services and/or materials set forth in the schedule B and attachments 18, 19, 20, and 21 shall undertake performance in accordance therewith and within the monetary limitations set forth therein. The contractor shall not exceed the monetary limit of any time and materials type task order without prior approval of the contracting officer. For the duration of the contract, the contractor shall maintain the capability to perform the orders issued hereunder.

c. Orders Under Multiple Award Contracts Except as provided for below, for orders issued under multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of \$2,500. Each order for services exceeding \$100,000.00 will be placed on a competitive basis in accordance with DFAR 216.505-70. In determining the procedures for providing awardees a fair opportunity to be considered for each order, the contracting officer may exercise broad discretion and consider such factors as past performance, quality of deliverables, cost control, price, cost, or other factors that the contracting officer, in the exercise of sound business judgment, believes are relevant to the placement of orders. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of Federal Acquisition Regulation Part 6, although fair consideration will be given to all awardees prior to the placement of an order. The contracting officer may employ oral proposal and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. In limited instances, awardees will not be given an opportunity to be considered for a particular order in excess of \$100,000 under a multiple task order contract if the contracting officer determines that:

- (1) the agency's need for the item is of such urgency that providing the opportunity would cause unacceptable delays;
- (2) only one contractor is capable of providing the item because of unique or highly specialized qualifications;
- (3) the order should be placed as a sole source order because the interests of economy and efficiency dictate that the contractor should receive it as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or
- (4) it is necessary to place the order to satisfy a minimum guarantee.

No protest under FAR Subpart 33.1 is authorized in connection with the issuance of an order under the proposed task order contract, except for a protest that the order increases the scope, period or maximum value of the contract.

d. Ordering

(1) UNILATERAL ORDERS. Use of unilateral (time-and-materials) delivery orders wherein contracting officer will send to the contractor a statement of work, a specified number of hours to be performed at the fixed hourly rates stipulated in the applicable portion of Schedule B and attachments of this contract, an estimate of any other direct costs to be associated with the performance of the statement of work. The extended price for the specified number of hours and other direct costs shall constitute an estimated ceiling price which the contractor may not exceed except at his own risk. Should the work require a larger number of hours or more other direct costs, the contractor shall submit to the contracting officer within 30 days of reaching 75% of the ceiling, or as specified in the individual delivery order, a justification for any anticipated increase in the amount of the ceiling price. The contracting officer may either

increase or allow the ceiling price to remain in effect. The contractor shall not transfer labor, material or travel dollars between separate orders.

(2) BILATERAL ORDERS. Prior to issuance of any bilateral delivery order under this contract, the Government will transmit the statement of work by letter to the selected contractor(s). After receipt of that letter, the contractor shall provide an estimate of the cost to perform that statement of work utilizing only the labor categories and rates set forth in this contract. The estimate must include all labor, materials, and travel required for completion of the statement of work, and the technical rationale therefore. Based upon the contractor's estimate, the Government and the contractor will enter into discussions and reach agreement on an estimated ceiling price if for a time-and-materials order, or for a fixed amount in the event of a firm-fixed price order. After agreement by the Government and the contractor on the estimate for performance of the statement of work, the Government will provide an unsigned delivery order containing the statement of work at the agreed-upon estimated ceiling price or fixed price for signature by the contractor. The contractor must return the signed delivery order to the Government for signature by the contracting officer within 3 work days of receipt. EXPEDITED. When delivery order performance is urgent, the Government will transmit the statement of work via electronic means or facsimile. Within 2 working days and not later than the third morning (10:00a.m.) the contractor shall provide an estimate of the cost to perform the statement of work and the technical rationale therefore. Discussions, if necessary, will be conducted to determine a fair and reasonable price. Upon agreement of the ceiling price or fixed price, the Government will transmit the delivery order by electronic means or issue a facsimile award. If a facsimile award is issued, it shall be followed by the issuance of the formal delivery order. By utilizing this method, the contractor shall begin work not later than the eighth day after transmission of the statement of work.

e. If the contractor determines that the statement of work is not within the scope of the basic contract, the contractor shall notify the contracting officer immediately in writing and shall include the reason for such judgement.

f. All orders will be signed by the contracting officer before performance of work is to begin. No work shall be initiated by the contractor prior to receipt of the signed delivery order. It is the intent of the Government to distribute the issuance of delivery orders over the period of the contract; however, due to the nature of the mission, there is no guarantee of an orderly flow of work. Delivery orders may be issued under this contract from date of award throughout contract ordering period.

g. All delivery orders issued hereunder are subject to the terms and conditions of the basic contract. The basic contract shall control in the event of conflict with any delivery order.

h. When mailed or sent by electronic means or facsimile, a delivery order shall be deemed "issued" for purposes of this contract at the time the Government deposits the delivery order in the mail or transmits the order by electronic facsimile (FAX). For delivery orders other than those mailed or sent by electronic means or facsimile, the delivery order shall be deemed "issued" when signed by the contracting officer.

i. The work to be performed shall be in accordance with the written statement of work attached to each delivery order and made a part thereof.

(END OF CLAUSE)

NEW TECHNOLOGY CLAUSE

52.242-4147 NEW TECHNOLOGY AND UPGRADED MODELS

g. The Contractor may offer, for the Government's consideration, items of hardware, firmware, or software, including support thereof, where such items represent advancements in the state-of-the-art or performance enhancement. If the Government determines it to be to its advantage, those items may be incorporated under this contract by modification.

h. If the Contractor, in its product line, upgrades an item that is available as a line item hereunder or substitutes a new item with enhanced performance features for an item that is available as a line item under this contract, such improved items may be included in this contract in place of the existing items at not greater than the existing prices established in Section B.

i. The Contractor shall notify the Contracting Officer of any such changes in its

product line that affect this contract promptly after the company institutes the change.

j. In the case of software products, no additional license fees shall be applicable to the substitute products.

CLAUSES INCORPORATED BY REFERENCE

252.242-7000

Postaward Conference

DEC 1991

Section I - Contract Clauses

CLAUSES INCORPORATED BY REFERENCE

52.202-1	Definitions	DEC 2001
52.202-1 Alt I	Definitions (Dec 2001) --Alternate I	MAY 2001
52.203-3	Gratuities	APR 1984
52.203-5	Covenant Against Contingent Fees	APR 1984
52.203-6	Restrictions On Subcontractor Sales To The Government	JUL 1995
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	JAN 1997
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	JUN 1997
52.204-2	Security Requirements	AUG 1996
52.204-2 Alt II	Security Requirements (Aug 1996) - Alternate II	APR 1984
52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment	JUL 1995
52.211-5	Material Requirements	AUG 2000
52.211-10	Commencement, Prosecution, and Completion of Work	APR 1984
52.211-10 Alt I	Commencement, Prosecution, and Completion of Work (Apr 1984) - Alternate I	APR 1984
52.211-12	Liquidated Damages--Construction	SEP 2000
52.211-13	Time Extensions	SEP 2000
52.211-15	Defense Priority And Allocation Requirements	SEP 1990
52.215-2	Audit and Records--Negotiation	JUN 1999
52.215-8	Order of Precedence--Uniform Contract Format	OCT 1997
52.215-10	Price Reduction for Defective Cost or Pricing Data	OCT 1997
52.215-11	Price Reduction for Defective Cost or Pricing Data--Modifications	OCT 1997
52.215-12	Subcontractor Cost or Pricing Data	OCT 1997
52.215-13	Subcontractor Cost or Pricing Data--Modifications	OCT 1997
52.215-14	Integrity of Unit Prices	OCT 1997
52.215-15	Pension Adjustments and Asset Reversions	DEC 1998
52.215-17	Waiver of Facilities Capital Cost of Money	OCT 1997
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other than Pensions	OCT 1997
52.215-19	Notification of Ownership Changes	OCT 1997
52.216-22	Indefinite Quantity	OCT 1995
52.216-23	Execution And Commencement Of Work	APR 1984
52.216-26	Payments Of Allowable Costs Before Definitization	MAR 2000
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns	JAN 1999
52.219-7	Notice of Partial Small Business Set-Aside	JUL 1996
52.219-8	Utilization of Small Business Concerns	OCT 2000
52.219-9 Alt II	Small Business Subcontracting Plan (Jan 2002) Alternate II	OCT 2001
52.219-14	Limitations On Subcontracting	DEC 1996
52.219-16	Liquidated Damages-Subcontracting Plan	JAN 1999

52.219-23	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns	MAY 2001
52.222-2	Payment For Overtime Premiums	JUL 1990
52.222-3	Convict Labor	AUG 1996
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	SEP 2000
52.222-6	Davis Bacon Act	FEB 1995
52.222-7	Withholding of Funds	FEB 1988
52.222-8	Payrolls and Basic Records	FEB 1988
52.222-9	Apprentices and Trainees	FEB 1988
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	FEB 1988
52.222-12	Contract Termination-Debarment	FEB 1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations.	FEB 1988
52.222-14	Disputes Concerning Labor Standards	FEB 1988
52.222-15	Certification of Eligibility	FEB 1988
52.222-16	Approval of Wage Rates	FEB 1988
52.222-20	Walsh-Healy Public Contracts Act	DEC 1996
52.222-21	Prohibition Of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	APR 2002
52.222-27	Affirmative Action Compliance Requirements for Construction	FEB 1999
52.222-29	Notification Of Visa Denial	FEB 1999
52.222-35	Equal Opportunity For Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans	DEC 2001
52.222-36	Affirmative Action For Workers With Disabilities	JUN 1998
52.222-37	Employment Reports On Special Disabled Veterans, Veterans Of The Vietnam Era and Other Eligible Veterans	DEC 2001
52.222-41	Service Contract Act Of 1965, As Amended	MAY 1989
52.222-42	Statement Of Equivalent Rates For Federal Hires	MAY 1989
52.222-43	Fair Labor Standards Act And Service Contract Act - Price Adjustment (Multiple Year And Option)	MAY 1989
52.222-44	Fair Labor Standards And Service Contract Act - Price Adjustment	FEB 2002
52.222-47	Service Contract Act (SCA) Minimum Wages And Fringe Benefits	MAY 1989
52.222-49	Service Contract Act -- Place Of Performance Unknown	MAY 1989
52.223-3	Hazardous Material Identification And Material Safety Data	JAN 1997
52.223-5	Pollution Prevention and Right-to-Know Information	APR 1998
52.223-6	Drug Free Workplace	MAY 2001
52.223-12	Refrigeration Equipment and Air Conditioners	MAY 1995
52.223-14	Toxic Chemical Release Reporting	OCT 2000
52.226-1	Utilization Of Indian Organizations And Indian-Owned Economic Enterprises	JUN 2000
52.227-1	Authorization and Consent	JUL 1995
52.227-2	Notice And Assistance Regarding Patent And Copyright Infringement	AUG 1996
52.227-3	Patent Indemnity	APR 1984
52.227-4	Patent Indemnity-Construction Contracts	APR 1984
52.227-10	Filing Of Patent Applications--Classified Subject Matter	APR 1984
52.227-11	Patent Rights--Retention By The Contractor (Short Form)	JUN 1997
52.227-12	Patent Rights--Retention By The Contractor (Long Form)	JAN 1997
52.227-13	Patent Rights--Acquisition By The Government	JAN 1997
52.228-2	Additional Bond Security	OCT 1997

52.228-3	Worker's Compensation Insurance (Defense Base Act)	APR 1984
52.228-5	Insurance - Work On A Government Installation	JAN 1997
52.228-7	Insurance--Liability To Third Persons	MAR 1996
52.228-8	Liability and Insurance - Leased Motor Vehicles	MAY 1999
52.228-11	Pledges Of Assets	FEB 1992
52.228-13	Alternative Payment Protections	JUL 2000
52.228-14	Irrevocable Letter of Credit	DEC 1999
52.229-1	State and Local Taxes	APR 1984
52.229-2	North Carolina State and Local Sales and Use Tax	APR 1984
52.229-3	Federal, State And Local Taxes	JAN 1991
52.229-5	Taxes--Contracts Performed In U S Possessions Or Puerto Rico	APR 1984
52.229-6	Taxes--Foreign Fixed-Price Contracts	JAN 1991
52.230-2	Cost Accounting Standards	APR 1998
52.230-3	Disclosure And Consistency Of Cost Accounting Practices	APR 1998
52.230-6	Administration of Cost Accounting Standards	NOV 1999
52.232-1	Payments	APR 1984
52.232-5	Payments under Fixed-Price Construction Contracts	MAY 1997
52.232-7 Alt I	Payments Under Time-And-Materials And Labor Hour Contracts (Feb 2002) - Alternate I	MAR 2000
52.232-8	Discounts For Prompt Payment	FEB 2002
52.232-9	Limitation On Withholding Of Payments	APR 1984
52.232-10	Payments under Fixed-Price Architect-Engineer Contracts	AUG 1987
52.232-11	Extras	APR 1984
52.232-17	Interest	JUN 1996
52.232-18	Availability Of Funds	APR 1984
52.232-19	Availability Of Funds For The Next Fiscal Year	APR 1984
52.232-25	Prompt Payment	FEB 2002
52.232-26	Prompt Payment for Fixed-Price Architect-Engineer Contracts	FEB 2002
52.232-32	Performance-Based Payments	FEB 2002
52.232-33	Payment by Electronic Funds Transfer--Central Contractor Registration	MAY 1999
52.232-34	Payment By Electronic Funds Transfer--Other Than Central Contractor Registration	MAY 1999
52.232-37	Multiple Payment Arrangements	MAY 1999
52.233-1 Alt I	Disputes (Dec 1998) - Alternate I	DEC 1991
52.233-3	Protest After Award	AUG 1996
52.236-1	Performance of Work by the Contractor	APR 1984
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-13 Alt I	Accident Prevention (Nov 1991) - Alternate I	NOV 1991
52.236-14	Availability and Use of Utility Services	APR 1984
52.236-15	Schedules for Construction Contracts	APR 1984
52.236-17	Layout of Work	APR 1984

52.236-21	Specifications and Drawings for Construction	FEB 1997
52.236-22	Design within Funding Limitations	APR 1984
52.236-23	Responsibility of the Architect-Engine Contractor	APR 1984
52.236-24	Work Oversight in Architect-Engine Contracts	APR 1984
52.236-25	Requirements for Registration of Designers	APR 1984
52.236-26	Preconstruction Conference	FEB 1995
52.237-2	Protection Of Government Buildings, Equipment, And Vegetation	APR 1984
52.237-3	Continuity Of Services	JAN 1991
52.237-4	Payment by Government to Contractor	APR 1984
52.237-5	Payment by Contractor to Government	APR 1984
52.242-13	Bankruptcy	JUL 1995
52.242-14	Suspension of Work	APR 1984
52.243-1	Changes--Fixed Price	AUG 1987
52.243-1 Alt II	Changes--Fixed-Price (Aug 1987) - Alternate II	APR 1984
52.243-1 Alt III	Changes--Fixed Price (Aug 1987) - Alternate III	APR 1984
52.243-2 Alt III	Changes--Cost-Reimbursement (Aug 1987) - Alternate III	APR 1984
52.243-3	Changes--Time-And-Material Or Labor-Hours	SEP 2000
52.243-4	Changes	AUG 1987
52.243-5	Changes and Changed Conditions	APR 1984
52.244-2	Subcontracts	AUG 1998
52.244-4	Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)	AUG 1998
52.244-5	Competition In Subcontracting	DEC 1996
52.246-21	Warranty of Construction	MAR 1994
52.246-23	Limitation Of Liability	FEB 1997
52.246-24	Limitation Of Liability-High Value Items	FEB 1997
52.246-25	Limitation Of Liability--Services	FEB 1997
52.247-63	Preference For U.S. Flag Air Carriers	JAN 1997
52.247-64	Preference for Privately Owned U.S. - Flag Commercial Vessels	JUN 2000
52.248-1	Value Engineering	FEB 2000
52.248-2	Value Engineering--Architect-Engineer	MAR 1990
52.248-3	Value Engineering-Construction	FEB 2000
52.249-1	Termination For Convenience Of The Government (Fixed Price) (Short Form)	APR 1984
52.249-1 Alt I	Termination for Convenience of the Government (Fixed-price) (Short Form) (Apr 1984) Alternate I	APR 1984
52.249-2	Termination For Convenience Of The Government (Fixed-Price)	SEP 1996
52.249-3	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)	SEP 1996
52.249-4	Termination For Convenience Of The Government (Services) (Short Form)	APR 1984
52.249-6 Alt IV	Termination (Cost Reimbursement) (Sep 1996) - Alternate IV	SEP 1996
52.249-7	Termination (Fixed-Price Architect-Engineer)	APR 1984
52.249-8	Default (Fixed-Price Supply & Service)	APR 1984
52.249-10	Default (Fixed-Price Construction)	APR 1984
52.249-10 Alt I	Default (Fixed-Price Construction) - Alternate I	APR 1984
52.249-10 Alt II	Default (Fixed-Price Construction) - Alternate II	APR 1984
52.249-10 Alt III	Default (Fixed-Price Construction) - Alternate III	APR 1984
52.249-14	Excusable Delays	APR 1984
52.253-1	Computer Generated Forms	JAN 1991
252.225-7002	Qualifying Country Sources As Subcontractors	DEC 1991

252.225-7005	Identification Of Expenditures In The United States	APR 2002
252.225-7007	Buy American Act--Trade Agreements--Balance of Payments Program	SEP 2001
252.225-7008	Supplies To Be Accorded Duty-Free Entry	MAR 1998
252.225-7009	Duty-Free Entry--Qualifying Country Supplies (End Products and Components)	AUG 2000
252.225-7009	Duty-Free Entry--Qualifying Country Supplies (End Products and Components)	AUG 2000
252.225-7033	Restriction Of Acquisition Of Four Ton Dolly Jacks	APR 1993
252.225-7036	Buy American--North American Free Trade Agreement Implementation Act--Balance of Payments Program	MAR 1998
252.225-7043	Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States	JUN 1998

CLAUSES INCORPORATED BY FULL TEXT

252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises-DoD Contracts (Sep 2001)

(a) Definitions. As used in this clause--

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C. Chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452 (c).

“Interested party” means a contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contract shall use its best efforts to give Indian organizations and Indian-owned economic enterprises the maximum practicable opportunity to participate in the subcontracts it awards, to the fullest extent consistent with efficient performance of the contract.

(c) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless and interested party challenges its status or the Contracting Officer has independent reason to question that status.

(d) In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs, Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street NW, MS-2626-MIB, Washington, DC 20240-4000. The BIA will determine the eligibility and will notify the Contracting Officer. No incentive payment will be made--

(1) Within 59 working days of subcontract award;

(2) While a challenge is pending; or

(3) If a subcontractor is determined to be an ineligible participant.

(e)(1) The Contractor, on its own behalf or on behalf of a subcontractor at any tier, may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee contract.

(iii) The target cost and ceiling price of a fixed-price incentive contract.

(iv) The price of a firm-fixed-price contract.

(2) The amount of the adjustment that may be made to the contract is 5 percent of the estimated cost, target cost, or firm-fixed price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(3) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(4) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(5) If the Contractor requests and receives an adjustment on behalf of a subcontractor, the Contractor is obligated to pay the subcontractor the adjustment.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts that--

(1) Are for other than commercial items; and

(2) Are expected to exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation.

(End of clause)

52.216-18 ORDERING. (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from Effective Award Date Block 3 of SF26 through 5 years from Award Date previously annotated.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 ORDER LIMITATIONS. (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than \$0.00, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor:

(1) Any order for a single item in excess of ~~\$300,000,000;~~ \$5 million;

(2) Any order for a combination of items in excess of ~~\$300,000,000~~ \$5 million; or

(3) A series of orders from the same ordering office within 1 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 7 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.223-9 ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000)

(a) Definitions. As used in this clause--

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall--

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to _____ [Contracting Officer complete in accordance with agency procedures].

(End of clause)

52.223-11 OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) Definition. Ozone-depleting substance, as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as--

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

“WARNING: Contains (or manufactured with, if applicable), a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.”-----

The Contractor shall insert the name of the substance(s).

(End of clause)

52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (JUL 2000)-

(a) Definitions. As used in this clause--

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (JUL 2000)-

(a) Definitions. As used in this clause--

Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) Amount of required bonds. Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (Standard Form 25). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds (Standard Form 25-A). The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection. (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch, 401 14th Street, NW, 2nd Floor, West Wing, Washington, DC 20227.

(e) Notice of subcontractor waiver of protection (40 U.S.C. 270b(c). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.arnet.gov/far/>

252.225-7001 BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (MAR 1998)

(a) Definitions.

As used in this clause--

(1) Components means those articles, materials, and supplies directly incorporated into end products.

(2) Domestic end product means--

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind--

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) Nonqualifying country end product means an end product that is neither a domestic end product nor a qualifying country end product.

(5) Qualifying country means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(6) Qualifying country component means an item mined, produced, or manufactured in a qualifying country.

(7) Qualifying country end product means--

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) in a manner that will encourage a favorable international balance of payments by providing a preference to domestic end products over other end products, except for end products which are qualifying country end products.

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act--Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

(d) The offered price of qualifying country end products should not include custom fees or duty. The offered price of nonqualifying country end products, and products manufactured in the United States that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, when the Buy American Act is applicable, each nonqualifying country offer is adjusted for the purpose of evaluation by adding 50 percent of the offer, inclusive of duty.

252.225-7002 QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (DEC 1991)

Subject to the restrictions in section 225.872 of the Defense FAR Supplement, the Contractor shall not preclude qualifying country sources and U.S. sources from competing for subcontracts under this contract.

(End of clause)

252.225-7010 DUTY-FREE ENTRY--ADDITIONAL PROVISIONS (AUG 2000)

(a) The requirements of this clause supplement the Duty-Free Entry clause of this contract.

Both of these clauses apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether placed--

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontractor purchase order under a contract with a domestic concern.

(b) The Contractor shall send the notification required by paragraph (b)(1) of the Duty-Free Entry clause of this contract to the Contracting Officer administering this contract.

(c) In addition to any data required by paragraph (b)(1) of the Duty-Free Entry clause, the Contractor shall furnish the following for all foreign supplies to be imported pursuant to paragraph (a) or (b) of the Duty-Free Entry clause. The Contractor shall furnish this information to the Contracting Officer administering the prime contract immediately upon award of any contract or subcontract involving supplies to be accorded duty-free entry.

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number plus delivery order number, if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for foreign supplies;

(7) Total dollar value of the subcontract for foreign supplies;

(8) Expiration date of the subcontract for foreign supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of foreign supplies as follows: I certify that all supplies for which duty-free entry is to be claimed are to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) The Contractor agrees to incorporate the substance of this clause, including this paragraph (d), in any subcontract (including purchase orders) in accordance with paragraph (i) of the Duty-Free Entry clause of this contract. The Contractor agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract and its activity address number (appendix G of the Defense FAR Supplement)) and the information required by paragraphs (c)(1), (2), and (3) of this clause will be included in applicable subcontracts.

(e) To properly complete the shipping document instructions as required by paragraph (f) of the Duty-Free Entry clause, the Contractor shall insert Defense Contract Management (DCM) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York 10305-5013, as the cognizant contract administration office (for paragraph (f) only) in those cases when the shipment is consigned directly to a military installation.;

(1) Delivery order number on the Government prime contract, if applicable;

(2) Number of the subcontract/purchase order for foreign supplies, if applicable;

(3) Activity address number of the contract administration office actually administering the prime contract, e.g., for DCMC Dayton, S3605A.

(f) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry into the United States, its possessions, or Puerto Rico of foreign supplies in connection with DoD contracts. The Contractor shall submit the completed customs forms to the District Director of Customs with a copy to DCMAO New York for execution of any required duty-free entry certificates. For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items which are eligible for duty-free entry under the provisions of the Duty-Free Entry clause. Shipments consigned directly to a military installation will be released in accordance with §§10.101 and 10.102 of the U.S. Customs regulations.

(g) The Contractor shall ensure that all exterior containers are marked in accordance with paragraph (g) of the Duty-Free Entry clause, including the following additional data--

(1) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE:" and

(2) The activity address number for the contract administration office actually administering the prime contract.

(End of clause)

252.225-7021 TRADE AGREEMENTS (SEP 2001)

(a) Definitions. As used in this clause--

(1) Caribbean Basin country means--

Antigua and Barbuda

Aruba

Bahamas

Barbados

Belize

British Virgin Islands

Costa Rica

Dominica

El Salvador

Grenada

Guatemala

Guyana

Haiti

Iceland

Jamaica

Montserrat

Netherlands Antilles

Nicaragua

St. Kitts-Nevis

St. Lucia
St. Vincent and the Grenadines
Trinidad and Tobago

(2) Caribbean Basin country end product--

(i) Means an article that--

(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself; and

(ii) Excludes products, other than petroleum and any product derived from petroleum, that are not granted duty-free treatment under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of--

(A) Textiles, apparel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, and handloomed, handmade, or folklore articles that are not granted duty-free status in the Harmonized Tariff Schedule of the United States (HTSUS);

(B) Tuna, prepared or preserved in any manner in airtight containers; and

(C) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the HTSUS column 2 rates of duty (HTSUS General Note 3(b)) apply.

(3) Components means those articles, materials, and supplies directly incorporated into end products.

(4) Designated country means--

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland

[France](#)
[Gambia](#)
[Germany](#)
[Greece](#)
[Guinea](#)
[Guinea-Bissau](#)
[Haiti](#)
[Hong Kong](#)
[Ireland](#)
[Israel](#)
[Italy](#)
[Japan](#)
[Kiribati](#)
[Lesotho](#)
[Liechtenstein](#)
[Luxembourg](#)
[Malawi](#)
[Maldives](#)
[Mali](#)
[Mozambique](#)
[Nepal](#)
[Netherlands](#)
[Niger](#)
[Norway](#)
[Portugal](#)
[Republic of Korea](#)
[Rwanda](#)
[Sao Tome and Principe](#)
[Sierra Leone](#)
[Singapore](#)
[Somalia](#)
[Spain](#)
[Sweden](#)
[Switzerland](#)
[Tanzania U.R.](#)
[Togo](#)
[Tuvalu](#)
[Uganda](#)
[United Kingdom](#)
[Vanuatu](#)
[Western Samoa](#)
[Yemen](#)

(5) Designated country end product means an article that--

(i) Is wholly the growth, product, or manufacture of the designated country; into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(6) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by

the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(7) NAFTA country end product means an article that--

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(8) Nondesignated country end product means any end product that is not a U.S. made end product or a designated country end product.

(9) North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

(10) Qualifying country means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(11) Qualifying country end product means--

(i) An unmanufactured end product mined or produced in a qualifying country; or (ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(12) United States means the United States, its possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(13) U.S. made end product means an article that--

(i) Is wholly the growth, product, or manufacture of the United States; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) Unless otherwise specified, the Trade Agreements Act of 1979 (19 U.S.C. 2501, et seq.), the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note), and the Caribbean Basin Initiative apply to all items in the Schedule.

(c)(1) The Contractor agrees to deliver under this contract only U.S. made, qualifying country, designated country, Caribbean Basin country or NAFTA country end product unless, in its offer, it specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation.

(2) The Contractor may not supply a nondesignated country end product other than a qualifying country end product, a Caribbean Basin country end product, or a NAFTA country end product, unless--

(i) The Contracting Officer has determined that offers of U.S. made end products or qualifying, designated, Caribbean Basin, or NAFTA country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979.

(d) The offered price of end products listed in paragraph (c)(2) of the Trade Agreements Certificate provision of the solicitation must include all applicable duty, whether or not a duty-free entry certificate will be granted. The offered price of qualifying country, designated country, Caribbean Basin country, or NAFTA country end products, for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of U.S. made end products should not include duty for qualifying country components.

(e) The HTSUS is available on the Internet at <http://www.customs.ustreas.gov/impexpo/impexpo.htm>. The following sections of the HTSUS provide information regarding duty-free status of articles specified in paragraph (a)(2)(ii)(A) of this clause:

(1) General Note 3(c), Products Eligible for Special Tariff Treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries Under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits Under the United States-Caribbean Basin Trade Partnership Act.

(End of clause)

252.225-7036 BUY AMERICAN ACT--NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT--BALANCE OF PAYMENTS PROGRAM (MAR 1998)

(a) Definitions. As used in this clause--

(1) Components means those articles, materials, and supplies directly incorporated into end products.

(2) Domestic end product means--

(i) An unmanufactured end product that has been mined or produced in the United States; or

(ii) An end product manufactured in the United States if the cost of its qualifying country components and its components that are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind--

(A) Determined to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(B) That the Secretary concerned determines would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(3) End product means those articles, materials, and supplies to be acquired for public use under the contract. For this contract, the end products are the line items to be delivered to the Government (including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery).

(4) Foreign end product means an end product other than a domestic end product.

(5) North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

(6) NAFTA country end product means an article that--

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(7) Qualifying country means any country set forth in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(8) Qualifying country component means an item mined, produced, or manufactured in a qualifying country.

(9) Qualifying country end product means--

(i) An unmanufactured end product mined or produced in a qualifying country; or

(ii) An end product manufactured in a qualifying country if the cost of the components mined, produced, or manufactured in the qualifying country and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) Unless otherwise specified, the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note) applies to all items in the Schedule.

(c) The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or other foreign end products in the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a domestic end product. (d) The offered price of qualifying country end products, or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. The offered price of foreign end products listed in paragraph (c)(2)(iii) of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation, or the offered price of domestic end products that contain nonqualifying country components, must include all applicable duty. The award price will not include duty for end products or components that are to be accorded duty-free entry. Generally, each foreign end product

listed in paragraph (c)(2)(iii) of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate provision of the solicitation is adjusted for the purpose of evaluation by adding 50 percent of the offered price, inclusive of duty.

(End of clause)

252.225-7037 DUTY-FREE ENTRY--ELIGIBLE END PRODUCTS (AUG 2000)

(a) Definition. Eligible end product, as used in this clause, means--

(1) Designated country end product, Caribbean Basin country end product, or NAFTA country end product, as defined in the Trade Agreements clause of this contract;

(2) NAFTA country end product, as defined in the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause of this contract; or

(3) Canadian end product, as defined in Alternate I of the Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve delivery of eligible end products to be accorded duty-free entry whether placed--

(1) Directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for eligible end products.

(d) The Contractor warrants that--

(1) All eligible end products, for which duty-free entry is to be claimed under this clause, are intended to be delivered to the Government; and

(2) The Contractor will pay any applicable duty to the extent that such eligible end products, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free certificates and to afford such assistance as appropriate to obtain the duty-free entry of eligible end products for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree. (f) All shipping documents submitted to Customs, covering eligible end products for which duty-free entry certificates are to be issued under this clause, shall--

(1) Consign the shipments to the appropriate--

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information--

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv)(A) For direct shipments to a U.S. military installation, the notation: UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE Duty-Free Entry to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management (DCM) New York, ATTN: Customs Team, DCMDN-GNIC, 207 New York Avenue, Building 120, Staten Island, New York 10305-5013, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates.

(B) In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plant, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCM, New York, for execution of the duty-free certificate. (Note: In those instances where the shipment will be consigned to a contractor's plant and no duty-free entry certificate is required, the contractor or its agent shall claim duty-free entry under NAFTA or other trade agreement and shall comply with the U.S. Customs Service requirements. No notification to Commander, CDM, New York, is required.

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCM Dayton, S3605A.

(g) Preparation of customs forms. (1) Except for shipments consigned to a military installation, the Contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of eligible end products in connection with DoD contracts into the United States, its possessions, or Puerto Rico. The completed customs forms shall be submitted to the District Director of Customs with a copy to DCM New York for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies that are to be accorded duty-free entry and supplies that are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees--

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies, of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "UNITED STATES GOVERNMENT, DEPARTMENT OF DEFENSE;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of eligible end products to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the supplier of the eligible end products. The notice shall contain--

- (1) Prime contractor's name, address, and CAGE code;
- (2) Prime contract number, and delivery order number if applicable;
- (3) Total dollar value of the prime contract or delivery order;
- (4) Expiration date of the prime contract or delivery order;
- (5) Foreign supplier's name and address;
- (6) Number of the subcontract/purchase order for eligible end products;
- (7) Total dollar value of the subcontract for eligible end products;
- (8) Expiration date of the subcontract for eligible end products;
- (9) List of items purchased;
- (10) An agreement by the Contractor that any applicable duty shall be paid by the Contractor to the extent that such eligible end products are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer; and
- (11) The scheduled delivery date(s).

(End of clause)

252.227-7013 RIGHTS IN TECHNICAL DATA--NONCOMMERCIAL ITEMS. (NOV 1995)

(a) Definitions. As used in this clause:

- (1) Computer data base means a collection of data recorded in a form capable of being processed by a computer. The term does not include computer software.
- (2) Computer program means a set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
- (3) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.
- (4) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(5) Detailed manufacturing or process data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

(6) Developed means that an item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component, or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed," the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component, or process be actually reduced to practice within the meaning of Title 35 of the United States Code.

(7) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

(9) Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) Form, fit, and function data means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(11) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations, or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose technical data for commercial purposes or authorize others to do so.

(12) Government purpose rights means the rights to--

(i) Use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and

(ii) Release or disclose technical data outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose that data for United States government purposes.

(13) Limited rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government. The Government may not, without the written permission of the party asserting limited rights, release or disclose the technical data outside the Government, use the technical data for manufacture, or authorize the technical data to be used by another party, except that the Government may reproduce,

release or disclose such data or authorize the use or reproduction of the data by persons outside the Government if reproduction, release, disclosure, or use is--

(i) Necessary for emergency repair and overhaul; or

(ii) A release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(iii) Subject to a prohibition on the further reproduction, release, disclosure, or use of the technical data; and

(iv) The contractor or subcontractor asserting the restriction is notified of such reproduction, release, disclosure, or use.

(14) Technical data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(15) Unlimited rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

(b) Rights in technical data. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in technical data other than computer software documentation (see the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract for rights in computer software documentation):

(1) Unlimited rights.

The Government shall have unlimited rights in technical data that are--

(i) Data pertaining to an item, component, or process which has been or will be developed exclusively with Government funds;

(ii) Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;

(iii) Created exclusively with Government funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;

(iv) Form, fit, and function data;

(v) Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);

(vi) Corrections or changes to technical data furnished to the Contractor by the Government;

(vii) Otherwise publicly available or have been released or disclosed by the Contractor or subcontractor without restrictions on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(viii) Data in which the Government has obtained unlimited rights under another Government contract or as a result of negotiations; or

(ix) Data furnished to the Government, under this or any other Government contract or subcontract thereunder, with--

(A) Government purpose license rights or limited rights and the restrictive condition(s) has/have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such data for commercial purposes has expired.

(2) Government purpose rights.

(i) The Government shall have government purpose rights for a five-year period, or such other period as may be negotiated, in technical data--

(A) That pertain to items, components, or processes developed with mixed funding except when the Government is entitled to unlimited rights in such data as provided in paragraphs (b)(ii) and (b)(iv) through (b)(ix) of this clause; or

(B) Created with mixed funding in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The five-year period, or such other period as may have been negotiated, shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the items, components, or processes or creation of the data described in paragraph (b)(2)(i)(B) of this clause. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the technical data.

(iii) The Government shall not release or disclose technical data in which it has government purpose rights unless--

(A) Prior to release or disclosure, the intended recipient is subject to the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS); or

(B) The recipient is a Government contractor receiving access to the data for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends.

(iv) The Contractor has the exclusive right, including the right to license others, to use technical data in which the Government has obtained government purpose rights under this contract for any commercial purpose during the time period specified in the government purpose rights legend prescribed in paragraph (f)(2) of this clause.

(3) Limited rights.

(i) Except as provided in paragraphs (b)(1)(ii) and (b)(1)(iv) through (b)(1)(ix) of this clause, the Government shall have limited rights in technical data--

(A) Pertaining to items, components, or processes developed exclusively at private expense and marked with the limited rights legend prescribed in paragraph (f) of this clause; or

(B) Created exclusively at private expense in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes.

(ii) The Government shall require a recipient of limited rights data for emergency repair or overhaul to destroy the data and all copies in its possession promptly following completion of the emergency repair/overhaul and to notify the Contractor that the data have been destroyed.

(iii) The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data furnished to the Government with limited rights. However, if the Government desires to obtain additional rights in technical data in which it has limited rights, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract. The license shall enumerate the additional rights granted the Government in such data.

(4) Specifically negotiated license rights.

The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in technical data, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights than are enumerated in paragraph (a)(13) of this clause. Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights.

Technical data that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless--

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability.

The Contractor agrees to release the Government from liability for any release or disclosure of technical data made in accordance with paragraph (a)(13) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the data and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor data marked with restrictive legends.

(c) Contractor rights in technical data. All rights not granted to the Government are retained by the Contractor.

(d) Third party copyrighted data. The Contractor shall not, without the written approval of the Contracting Officer, incorporate any copyrighted data in the technical data to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable data of the appropriate scope set forth in paragraph (b) of this clause, and has affixed a statement of the license or licenses obtained on behalf of the Government and other persons to the data transmittal document.

(e) Identification and delivery of data to be furnished with restrictions on use, release, or disclosure. (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, technical data that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure are identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any data with restrictive markings unless the data are listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the

source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled date for delivery of the data, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Technical Data.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following technical data should be restricted--

Technical data to be Furnished With Restrictions \1/ (LIST)	Basis for Assertion \2/ (LIST)	Asserted Rights Category \3/ (LIST)	Name of Person Asserting Restrictions \4/ (LIST)
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\1/ If the assertion is applicable to items, components or processes developed at private expense, identify both the data and each such items, component, or process.

\2/ Generally, the development of an item, component, or process at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose technical data pertaining to such items, components, or processes. Indicate whether development was exclusively or partially at private expense. If development was not at private expense, enter the specific reason for asserting that the Government's rights should be restricted.

\3/ Enter asserted rights category (e.g., government purpose license rights from a prior contract, rights in SBIR data generated under another contract, limited or government purpose rights under this or a prior contract, or specifically negotiated licenses).

\4/ Corporation, individual, or other person, as appropriate.

Date _____

Printed Name and Title _____

Signature _____

(End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Restrictive Markings on Technical Data clause of this contract.

(f) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data to be delivered under this contract by marking the deliverable data subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the limited rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all technical data that qualify for such markings. The authorized legends shall be

placed on the transmittal document or storage container and, for printed material, each page of the printed material containing technical data for which restrictions are asserted. When only portions of a page of printed material are subject to the asserted restrictions, such portions shall be identified by circling, underscoring, with a note, or other appropriate identifier. Technical data transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. Reproductions of technical data or any portions thereof subject to asserted restrictions shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Data delivered or otherwise furnished to the Government purpose rights shall be marked as follows:

Government Purpose Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

Expiration Date _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(2) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Limited rights markings. Data delivered or otherwise furnished to the Government with limited rights shall be marked with the following legend:

Limited Rights

Contract No. _____

Contractor Name _____

Contractor Address _____

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these technical data are restricted by paragraph (b)(3) of the Rights in Technical Data--Noncommercial Items clause contained in the above identified contract. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such data must promptly notify the above named Contractor.

(End of legend)

(4) Special license rights markings. (i) Data in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

Special License Rights

The Government's rights to use, modify, reproduce, release, perform, display, or disclose these data are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of technical data or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing data markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, reproduce, release, perform, display, or disclose technical data deliverable under this contract, and those restrictions are still applicable, the Contractor may mark such data with the appropriate restrictive legend for which the data qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver technical data with other than unlimited rights, shall--

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on technical data delivered under this contract.

(h) Removal of unjustified and nonconforming markings. (1) Unjustified technical data markings. The rights and obligations of the parties regarding the validation of restrictive markings on technical data furnished or to be furnished under this contract are contained in the Validation of Restrictive Markings on Technical Data clause of this contract. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures in the Validation of Restrictive Markings on Technical Data clause of this contract, a restrictive marking is determined to be unjustified.

(2) Nonconforming technical data markings. A nonconforming marking is a marking placed on technical data delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking and the Contractor fails to remove or correct such marking within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming marking.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Limitation on charges for rights in technical data. (1) The Contractor shall not charge to this contract any cost, including, but not limited to, license fees, royalties, or similar charges, for rights in technical data to be delivered under this contract when--

(i) The Government has acquired, by any means, the same or greater rights in the data; or

(ii) The data are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause--

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier technical data, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the technical data will be delivered.

(k) Applicability to subcontractors or suppliers. (1) The Contractor shall ensure that the rights afforded its subcontractors and suppliers under 10 U.S.C. 2320, 10 U.S.C. 2321, and the identification, assertion, and delivery processes of paragraph (e) of this clause are recognized and protected.

(2) Whenever any technical data for noncommercial items is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

(3) Technical data required to be delivered by a subcontractor or supplier shall normally be delivered to the next higher-tier contractor, subcontractor, or supplier. However, when there is a requirement in the prime contract for data which may be submitted with other than unlimited rights by a subcontractor or supplier, then said subcontractor or supplier may fulfill its requirement by submitting such data directly to the Government, rather than through a higher-tier contractor, subcontractor, or supplier.

(4) The Contractor and higher-tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in technical data from their subcontractors or suppliers. (5) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

(End of clause)

252.227-7014 RIGHTS IN NONCOMMERCIAL COMPUTER SOFTWARE AND NONCOMMERCIAL COMPUTER SOFTWARE DOCUMENTATION. (JUN 1995)

(a) Definitions. As used in this clause:

(1) Commercial computer software means software developed or regularly used for nongovernmental purposes which--

(i) Has been sold, leased, or licensed to the public;

(ii) Has been offered for sale, lease, or license to the public;

(iii) Has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this contract; or

(iv) Satisfies a criterion expressed in paragraph (a)(1) (i), (ii), or (iii) of this clause and would require only minor modification to meet the requirements of this contract.

(2) Computer database means a collection of recorded data in a form capable of being processed by a computer. The term does not include computer software.

(3) Computer program means a set of instructions, rules, or routines, recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

(4) Computer software means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer databases or computer software documentation.

(5) Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

(6) Developed means that--

(i) A computer program has been successfully operated in a computer and tested to the extent sufficient to demonstrate to reasonable persons skilled in the art that the program can reasonably be expected to perform its intended purpose;

(ii) Computer software, other than computer programs, has been tested or analyzed to the extent sufficient to demonstrate to reasonable persons skilled in the art that the software can reasonably be expected to perform its intended purpose; or

(iii) Computer software documentation required to be delivered under a contract has been written, in any medium, in sufficient detail to comply with requirements under that contract.

(7) Developed exclusively at private expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a government contract, or any combination thereof.

(i) Private expense determinations should be made at the lowest practicable level.

(ii) Under fixed-price contracts, when total costs are greater than the firm-fixed-price or ceiling price of the contract, the additional development costs necessary to complete development shall not be considered when determining whether development was at government, private, or mixed expense.

(8) Developed exclusively with government funds means development was not accomplished exclusively or partially at private expense.

(9) Developed with mixed funding means development was accomplished partially with costs charged to indirect cost pools and/or costs not allocated to a government contract, and partially with costs charged directly to a government contract.

(10) Government purpose means any activity in which the United States Government is a party, including cooperative agreements with international or multi-national defense organizations or sales or transfers by the United States Government to foreign governments or international organizations. Government purposes include competitive procurement, but do not include the rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation for commercial purposes or authorize others to do so.

(11) Government purpose rights means the rights to--

(i) Use, modify, reproduce, release, perform, display, or disclose computer software or computer software

documentation within the Government without restriction; and

(ii) Release or disclose computer software or computer software documentation outside the Government and authorize persons to whom release or disclosure has been made to use, modify, reproduce, release, perform, display, or disclose the software or documentation for United States government purposes.

(12) Minor modification means a modification that does not significantly alter the nongovernmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

(13) Noncommercial computer software means software that does not qualify as commercial computer software under paragraph (a)(1) of this clause.

(14) Restricted rights apply only to noncommercial computer software and mean the Government's rights to--

(i) Use a computer program with one computer at one time. The program may not be accessed by more than one terminal or central processing unit or time shared unless otherwise permitted by this contract;

(ii) Transfer a computer program to another Government agency without the further permission of the Contractor if the transferor destroys all copies of the program and related computer software documentation in its possession and notifies the licensor of the transfer. Transferred programs remain subject to the provisions of this clause;

(iii) Make the minimum number of copies of the computer software required for safekeeping (archive), backup, or modification purposes;

(iv) Modify computer software provided that the Government may--

(A) Use the modified software only as provided in paragraphs (a)(14) (i) and (iii) of this clause; and

(B) Not release or disclose the modified software except as provided in paragraphs (a)(14) (ii), (v) and (vi) of this clause;

(v) Permit contractors or subcontractors performing service contracts (see 37.101 of the Federal Acquisition Regulation) in support of this or a related contract to use computer software to diagnose and correct deficiencies in a computer program, to modify computer software to enable a computer program to be combined with, adapted to, or merged with other computer programs or when necessary to respond to urgent tactical situations, provided that--

(A) The Government notifies the party which has granted restricted rights that a release or disclosure to particular contractors or subcontractors was made;

(B) Such contractors or subcontractors are subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS) or are Government contractors receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends;

(C) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose; and

(D) Such use is subject to the limitation in paragraph (a)(14)(i) of this clause; and

(vi) Permit contractors or subcontractors performing emergency repairs or overhaul of items or components of items procured under this or a related contract to use the computer software when necessary to perform the repairs or overhaul, or to modify the computer software to reflect the repairs or overhaul made, provided that--

(A) The intended recipient is subject to the use and nondisclosure agreement at DFARS 227.7103-7 or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends; and

(B) The Government shall not permit the recipient to decompile, disassemble, or reverse engineer the software, or use software decompiled, disassembled, or reverse engineered by the Government pursuant to paragraph (a)(14)(iv) of this clause, for any other purpose.

(15) Unlimited rights means rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation in whole or in part, in any manner and for any purpose whatsoever, and to have or authorize others to do so.

(b) Rights in computer software or computer software documentation. The Contractor grants or shall obtain for the Government the following royalty free, world-wide, nonexclusive, irrevocable license rights in noncommercial computer software or computer software documentation. All rights not granted to the Government are retained by the Contractor.

(1) Unlimited rights. The Government shall have unlimited rights in--

(i) Computer software developed exclusively with Government funds;

(ii) Computer software documentation required to be delivered under this contract;

(iii) Corrections or changes to computer software or computer software documentation furnished to the Contractor by the Government;

(iv) Computer software or computer software documentation that is otherwise publicly available or has been released or disclosed by the Contractor or subcontractor without restriction on further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the software to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(v) Computer software or computer software documentation obtained with unlimited rights under another Government contract or as a result of negotiations; or

(vi) Computer software or computer software documentation furnished to the Government, under this or any other Government contract or subcontract thereunder with--

(A) Restricted rights in computer software, limited rights in technical data, or government purpose license rights and the restrictive conditions have expired; or

(B) Government purpose rights and the Contractor's exclusive right to use such software or documentation for commercial purposes has expired.

(2) Government purpose rights. (i) Except as provided in paragraph (b)(1) of this clause, the Government shall have government purpose rights in computer software development with mixed funding.

(ii) Government purpose rights shall remain in effect for a period of five years unless a different period has been negotiated. Upon expiration of the five-year or other negotiated period, the Government shall have unlimited rights in the computer software or computer software documentation. The government purpose rights period shall commence upon execution of the contract, subcontract, letter contract (or similar contractual instrument), contract modification, or option exercise that required development of the computer software.

(iii) The Government shall not release or disclose computer software in which it has government purpose rights to any other person unless--

(A) Prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at DFARS 227.7103-7; or

(B) The recipient is a Government contractor receiving access to the software or documentation for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends.

(3) Restricted rights. (i) The Government shall have restricted rights in noncommercial computer software required to be delivered or otherwise provided to the Government under this contract that were developed exclusively at private expense.

(ii) The Contractor, its subcontractors, or suppliers are not required to provide the Government additional rights in noncommercial computer software delivered or otherwise provided to the Government with restricted rights. However, if the Government desires to obtain additional rights in such software, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All noncommercial computer software in which the Contractor has granted the Government additional rights shall be listed or described in a license agreement made part of the contract (see paragraph (b)(4) of this clause). The license shall enumerate the additional rights granted the Government.

(4) Specifically negotiated license rights. (i) The standard license rights granted to the Government under paragraphs (b)(1) through (b)(3) of this clause, including the period during which the Government shall have government purpose rights in computer software, may be modified by mutual agreement to provide such rights as the parties consider appropriate but shall not provide the Government lesser rights in computer software than are enumerated in paragraph (a)(14) of this clause or lesser rights in computer software documentation than are enumerated in paragraph (a)(13) of the Rights in Technical Data--Noncommercial Items clause of this contract.

(ii) Any rights so negotiated shall be identified in a license agreement made part of this contract.

(5) Prior government rights. Computer software or computer software documentation that will be delivered, furnished, or otherwise provided to the Government under this contract, in which the Government has previously obtained rights shall be delivered, furnished, or provided with the pre-existing rights, unless--

(i) The parties have agreed otherwise; or

(ii) Any restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose the data have expired or no longer apply.

(6) Release from liability. The Contractor agrees to release the Government from liability for any release or disclosure of computer software made in accordance with paragraph (a)(14) or (b)(2)(iii) of this clause, in accordance with the terms of a license negotiated under paragraph (b)(4) of this clause, or by others to whom the recipient has released or disclosed the software, and to seek relief solely from the party who has improperly used, modified, reproduced, released, performed, displayed, or disclosed Contractor software marked with restrictive legends.

(c) Rights in derivative computer software or computer software documentation. The Government shall retain its rights in the unchanged portions of any computer software or computer software documentation delivered under this contract that the Contractor uses to prepare, or includes in, derivative computer software or computer software documentation.

(d) Third party copyrighted computer software or computer software documentation. The Contractor shall not,

without the written approval of the Contracting Officer, incorporate any copyrighted computer software or computer software documentation in the software or documentation to be delivered under this contract unless the Contractor is the copyright owner or has obtained for the Government the license rights necessary to perfect a license or licenses in the deliverable software or documentation of the appropriate scope set forth in paragraph (b) of this clause, and prior to delivery of such--

(1) Computer software, has provided a statement of the license rights obtained in a form acceptable to the Contracting Officer; or

(2) Computer software documentation, has affixed to the transmittal document a statement of the license rights obtained.

(e) Identification and delivery of computer software and computer software documentation to be furnished with restrictions on use, release, or disclosure. (1) This paragraph does not apply to restrictions based solely on copyright.

(2) Except as provided in paragraph (e)(3) of this clause, computer software that the Contractor asserts should be furnished to the Government with restrictions on use, release, or disclosure is identified in an attachment to this contract (the Attachment). The Contractor shall not deliver any software with restrictive markings unless the software is listed on the Attachment.

(3) In addition to the assertions made in the Attachment, other assertions may be identified after award when based on new information or inadvertent omissions unless the inadvertent omissions would have materially affected the source selection decision. Such identification and assertion shall be submitted to the Contracting Officer as soon as practicable prior to the scheduled data for delivery of the software, in the following format, and signed by an official authorized to contractually obligate the Contractor: Identification and Assertion of Restrictions on the Government's Use, Release, or Disclosure of Computer Software.

The Contractor asserts for itself, or the persons identified below, that the Government's rights to use, release, or disclose the following computer software should be restricted:

<u>Computer Software to be Fur-</u>	<u>Basis for</u>	<u>Asserted Rights</u>	<u>Name of Person Asserting</u>
<u>nished With Restrictions *</u>	<u>Assertion **</u>	<u>Category ***</u>	<u>Restrictions ****</u>

* Generally, development at private expense, either exclusively or partially, is the only basis for asserting restrictions on the Government's rights to use, release, or disclose computer software.

** Indicate whether development was exclusively or partially at private expense. If development was not a private expense, enter the specific reason for asserting that the Government's rights should be restricted.

*** Enter asserted rights category (e.g., restricted or government purpose rights in computer software, government purpose license rights a prior contract, rights in SBIR software generated under another contract, or specifically negotiated licenses).

**** Corporation, individual, or other person, as appropriate.

Date

Printed Name and Title

Signature

End of identification and assertion)

(4) When requested by the Contracting Officer, the Contractor shall provide sufficient information to enable the Contracting Officer to evaluate the Contractor's assertions. The Contracting Officer reserves the right to add the Contractor's assertions to the Attachment and validate any listed assertion, at a later date, in accordance with the procedures of the Validation of Asserted Restrictions--Computer Software clause of this contract.

(f) Marking requirements. The Contractor, and its subcontractors or suppliers, may only assert restrictions on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software by marking the deliverable software or documentation subject to restriction. Except as provided in paragraph (f)(5) of this clause, only the following legends are authorized under this contract: the government purpose rights legend at paragraph (f)(2) of this clause; the restricted rights legend at paragraph (f)(3) of this clause; or the special license rights legend at paragraph (f)(4) of this clause; and/or a notice of copyright as prescribed under 17 U.S.C. 401 or 402.

(1) General marking instructions. The Contractor, or its subcontractors or suppliers, shall conspicuously and legibly mark the appropriate legend on all computer software that qualify for such markings. The authorized legends shall be placed on the transmitted document or software storage container and each page, or portions thereof, of printed material containing computer software for which restrictions are asserted. Computer software transmitted directly from one computer or computer terminal to another shall contain a notice of asserted restrictions. However, instructions that interfere with or delay the operation of computer software in order to display a restrictive rights legend or other license statement at any time prior to or during use of the computer software, or otherwise cause such interference or delay, shall not be inserted in software that will or might be used in combat or situations that simulate combat conditions, unless the Contracting Officer's written permission to deliver such software has been obtained prior to delivery. Reproductions of computer software or any portions thereof subject to asserted restrictions, shall also reproduce the asserted restrictions.

(2) Government purpose rights markings. Computer software delivered or otherwise furnished to the Government with government purpose rights shall be marked as follows:

GOVERNMENT PURPOSE RIGHTS

Contract No.

Contractor Name

Contractor Address

Expiration Date

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(2) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. No restrictions apply after the expiration date shown above. Any reproduction of the software or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(3) Restricted rights markings. Software delivered or otherwise furnished to the Government with restricted rights shall be marked with the following legend:

RESTRICTED RIGHTS

Contract No.

Contractor Name

Contractor Address

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by paragraph (b)(3) of the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause contained in the above identified contract. Any reproduction of computer software or portions thereof marked with this legend must also reproduce the markings. Any person, other than the Government, who has been provided access to such software must promptly notify the above named Contractor.

(End of legend)

(4) Special license rights markings. (i) Computer software or computer documentation in which the Government's rights stem from a specifically negotiated license shall be marked with the following legend:

SPECIAL LICENSE RIGHTS

The Government's rights to use, modify, reproduce, release, perform, display, or disclose this software are restricted by Contract No. _____ (Insert contract number) _____, License No. _____ (Insert license identifier) _____. Any reproduction of computer software, computer software documentation, or portions thereof marked with this legend must also reproduce the markings.

(End of legend)

(ii) For purposes of this clause, special licenses do not include government purpose license rights acquired under a prior contract (see paragraph (b)(5) of this clause).

(5) Pre-existing markings. If the terms of a prior contract or license permitted the Contractor to restrict the Government's rights to use, modify, release, perform, display, or disclose computer software or computer software documentation and those restrictions are still applicable, the Contractor may mark such software or documentation with the appropriate restrictive legend for which the software qualified under the prior contract or license. The marking procedures in paragraph (f)(1) of this clause shall be followed.

(g) Contractor procedures and records. Throughout performance of this contract, the Contractor and its subcontractors or suppliers that will deliver computer software or computer software documentation with other than unlimited rights, shall--

(1) Have, maintain, and follow written procedures sufficient to assure that restrictive markings are used only when authorized by the terms of this clause; and

(2) Maintain records sufficient to justify the validity of any restrictive markings on computer software or computer software documentation delivered under this contract.

(h) Removal of unjustified and nonconforming markings. (1) Unjustified computer software or computer software documentation markings. The rights and obligations of the parties regarding the validation of restrictive markings on computer software or computer software documentation furnished or to be furnished under this contract are contained in the Validation of Asserted Restrictions--Computer Software and the Validation of Restrictive Markings on Technical Data clauses of this contract, respectively. Notwithstanding any provision of this contract concerning

inspection and acceptance, the Government may ignore or, at the Contractor's expense, correct or strike a marking if, in accordance with the procedures of those clauses, a restrictive marking is determined to be unjustified.

(2) Nonconforming computer software or computer software documentation markings. A nonconforming marking is a marking placed on computer software or computer software documentation delivered or otherwise furnished to the Government under this contract that is not in the format authorized by this contract. Correction of nonconforming markings is not subject to the Validation of Asserted Restrictions--Computer Software or the Validation of Restrictive Markings on Technical Data clause of this contract. If the Contracting Officer notifies the Contractor of a nonconforming marking or markings and the Contractor fails to remove or correct such markings within sixty (60) days, the Government may ignore or, at the Contractor's expense, remove or correct any nonconforming markings.

(i) Relation to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(j) Limitation on charges for rights in computer software or computer software documentation. (1) The Contractor shall not charge to this contract any cost, including but not limited to license fees, royalties, or similar charges, for rights in computer software or computer software documentation to be delivered under this contract when--

(i) The Government has acquired, by any means, the same or greater rights in the software or documentation; or

(ii) The software or documentation are available to the public without restrictions.

(2) The limitation in paragraph (j)(1) of this clause--

(i) Includes costs charged by a subcontractor or supplier, at any tier, or costs incurred by the Contractor to acquire rights in subcontractor or supplier computer software or computer software documentation, if the subcontractor or supplier has been paid for such rights under any other Government contract or under a license conveying the rights to the Government; and

(ii) Does not include the reasonable costs of reproducing, handling, or mailing the documents or other media in which the software or documentation will be delivered.

(k) Applicability to subcontractors or suppliers. (1) Whenever any noncommercial computer software or computer software documentation is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontracts or other contractual instruments, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's or supplier's rights in a subcontractor's or supplier's computer software or computer software documentation.

(2) The Contractor and higher tier subcontractors or suppliers shall not use their power to award contracts as economic leverage to obtain rights in computer software or computer software documentation from their subcontractors or suppliers.

(3) The Contractor shall ensure that subcontractor or supplier rights are recognized and protected in the identification, assertion, and delivery processes required by paragraph (e) of this clause.

(4) In no event shall the Contractor use its obligation to recognize and protect subcontractor or supplier rights in computer software or computer software documentation as an excuse for failing to satisfy its contractual obligation to the Government.

(End of clause)

252.227-7015 TECHNICAL DATA--COMMERCIAL ITEMS. (NOV 1995)

(a) Definitions. As used in this clause:

(1)"Commercial item" does not include commercial computer software.

(2) "Form, fit, and function data" means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

(3) The term "item" includes components or processes.

(4) "Technical data" means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

(b) License. (1) The Government shall have the unrestricted right to use, modify, reproduce, release, perform, display, or disclose technical data, and to permit others to do so, that--

(i) Have been provided to the Government or others without restrictions on use, modification, reproduction, release, or further disclosure other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the technical data to another party or the sale or transfer of some or all of a business entity or its assets to another party;

(ii) Are form, fit, and function data;

(iii) Are a correction or change to technical data furnished to the Contractor by the Government;

(iv) Are necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(v) Have been provided to the Government under a prior contract or licensing agreement through which the Government has acquired the rights to use, modify, reproduce, release, perform, display, or disclose the data without restrictions.

(2) Except as provided in paragraph (b)(1) of this clause, the Government may use, modify, reproduce, release, perform, display, or disclose technical data within the Government only. The Government shall not--

(i) Use the technical data to manufacture additional quantities of the commercial items; or

(ii) Release, perform, display, disclose, or authorize use of the technical data outside the Government without the Contractor's written permission unless a release, disclosure or permitted use is necessary for emergency repair or overhaul of the commercial items furnished under this contract.

(c) Additional license rights. The Contractor, its subcontractors, and suppliers are not required to provide the Government additional rights to use, modify, reproduce, release, perform, display, or disclose technical data. However, if the Government desires to obtain additional rights in technical data, the Contractor agrees to promptly enter into negotiations with the Contracting Officer to determine whether there are acceptable terms for transferring such rights. All technical data in which the Contractor has granted the Government additional rights shall be listed or described in a special license agreement made part of this contract. The license shall enumerate the additional rights granted the Government in such data.

(d) Release from liability. The Contractor agrees that the Government, and other persons to whom the Government may have released or disclosed technical data delivered or otherwise furnished under this contract, shall have no liability for any release or disclosure of technical data that are not marked to indicate that such data are licensed data subject to use, modification, reproduction, release, performance, display, or disclosure restrictions.

(End of clause)

252.227-7016 RIGHTS IN BID OR PROPOSAL INFORMATION (JUN 1995)

(a) Definitions.

(1) For contracts that require the delivery of technical data, the terms "technical data" and "computer software" are defined in the Rights in Technical Data--Noncommercial Item clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause of this contract.

(2) For contracts that do not require the delivery of technical data, the term "computer software" is defined in the Rights in Noncommercial Computer and Noncommercial Computer Software Documentation clause of this contract or, if this is a contract awarded under the Small Business Innovative Research Program, the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Government rights to contract award. By submission of its offer, the Offeror agrees that the Government--

(1) May reproduce the bid or proposal, or any portions thereof, to the extent necessary to evaluate the offer.

(2) Except as provided in paragraph (d) of this clause, shall use information contained in the bid or proposal only for evaluational purposes and shall not disclose, directly or indirectly, such information to any person including potential evaluators, unless that person has been authorized by the head of the agency, his or her designee, or the Contracting Officer to receive such information.

(c) Government rights subsequent to contract award--The Contractor agrees--

(1) Except as provided in paragraphs (c)((2), (d), and (e) of this clause, the Government shall have the rights to use, modify, reproduce, release, perform, display, or disclose information contained in the Contractor's bid or proposal within the Government. The Government shall not release, perform, display, or disclose such information outside the Government without the Contractor's written permission.

(2) The Government's right to use, modify, reproduce, release, perform, display, or disclose information that is technical data or computer software required to be delivered under this contract are determined by the Rights in Technical Data--Noncommercial Items, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation, or Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause(s) of this contract.

(d) Government-furnished information. The Government's rights with respect to technical data or computer software contained in the Contractor's bid or proposal that were provided to the Contractor by the Government are subject only to restrictions on use, modification, reproduction, release, performance, display, or disclosure, if any, imposed by the developer or licensor of such data or software.

(e) Information available without restrictions. The Government's rights to use, modify, reproduce, release, perform, display, or, disclose information contained in a bid or proposal, including technical data or computer software, and to

permit others to do so, shall not be restricted in any manner if such information has been released or disclosed to the Government or to other persons without restrictions other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the information to another party or the sale or transfer of some or all of a business entity or its assets to another party.

(f) Flowdown. Contractor shall include this clause in all subcontracts or similar contractual instruments and require its subcontractors or suppliers to do so without alteration, except to identify the parties.

(End of clause)

252.227-7019 VALIDATION OF ASSERTED RESTRICTIONS--COMPUTER SOFTWARE (JUN 1995)

(a) Definitions.

(1) As used in this clause, unless otherwise specifically indicated, the term "Contractor" means the Contractor and its subcontractors or suppliers.

(2) Other terms used in this clause are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(b) Justification. The Contractor shall maintain records sufficient to justify the validity of any markings that assert restrictions on the Government's rights to use, modify, reproduce, perform, display, release, or disclose computer software delivered or required to be delivered under this contract and shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a request for information under paragraph (d) or a challenge under paragraph (f) of this clause.

(c) Direct contact with subcontractors or suppliers. The Contractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors or suppliers at any tier who assert restrictions on the Government's right to use, modify, reproduce, release, perform, display, or disclose computer software. Neither this clause, nor any action taken by the Government under this clause, creates or implies privity of contract between the Government and the Contractor's subcontractors or suppliers.

(d) Requests for information.

(1) The Contracting Officer may request the Contractor to provide sufficient information to enable the Contracting Officer to evaluate the Contractor's asserted restrictions. Such information shall be based upon the records required by this clause or other information reasonably available to the Contractor.

(2) Based upon the information provided, if the--

(i) Contractor agrees that an asserted restriction is not valid, the Contracting Officer may--

(A) Strike or correct the unjustified marking at the Contractor's expense; or

(B) Return the computer software to the Contractor for correction at the Contractor's expense. If the Contractor fails to correct or strike the unjustified restrictions and return the corrected software to the Contracting Officer within sixty (60) days following receipt of the software, the Contracting Officer may correct the strike the markings at the Contractor's expense.

(ii) Contracting Officer concludes that the asserted restriction is appropriate for this contract, the Contracting Officer shall so notify the Contractor in writing.

(3) The Contractor's failure to provide a timely response to a Contracting Officer's request for information or failure to provide sufficient information to enable the Contracting Officer to evaluate an asserted restriction shall constitute reasonable grounds for questioning the validity of an asserted restriction.

(e) Government right to challenge and validate asserted restrictions. (1) The Government, when there are reasonable grounds to do so, has the right to review and challenge the validity of any restrictions asserted by the Contractor on the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software delivered, to be delivered under this contract, or otherwise provided to the Government in the performance of this contract. Except for software that is publicly available, has been furnished to the Government without restrictions, or has been otherwise made available without restrictions, the Government may exercise this right only within three years after the date(s) the software is delivered or otherwise furnished to the Government, or three years following final payment under this contract, whichever is later.

(2) The absence of a challenge to an asserted restriction shall not constitute validation under this clause. Only a Contracting Officer's final decision or actions of an agency Board of Contract Appeals or a court of competent jurisdiction that sustain the validity of an asserted restriction constitute validation of the restriction.

(f) Challenge procedures. (1) A challenge must be in writing and shall--

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require the Contractor to respond within sixty (60) days;

(iii) Require the Contractor to provide justification for the assertion based upon records kept in accordance with paragraph (b) of this clause and such other documentation that are reasonably available to the Contractor, in sufficient detail to enable the Contracting Officer to determine the validity of the asserted restrictions; and

(iv) State that a Contracting Officer's final decision, during the three-year period preceding this challenge, or action of a court of competent jurisdiction or Board of Contract Appeals that sustained the validity of an identical assertion made by the Contractor (or a licensee) shall serve as justification for the asserted restriction.

(2) The Contracting Officer shall extend the time for response if the Contractor submits a written request showing the need for additional time to prepare a response.

(3) The Contracting Officer may request additional supporting documentation if, in the Contracting Officer's opinion, the Contractor's explanation does not provide sufficient evidence to justify the validity of the asserted restrictions. The Contractor agrees to promptly respond to the Contracting Officer's request for additional supporting documentation.

(4) Notwithstanding challenge by the Contracting Officer, the parties may agree on the disposition of an asserted restriction at any time prior to a Contracting Officer's final decision or, if the Contractor has appealed that decision, filed suit, or provided notice of an intent to file suit, at any time prior to a decision by a court of competent jurisdiction or Board of Contract Appeals.

(5) If the Contractor fails to respond to the Contracting Officer's request for information or additional information under paragraph (f)(1) of this clause, the Contracting Officer shall issue a final decision, in accordance with the Disputes clause of this contract, pertaining to the validity of the asserted restriction.

(6) If the Contracting Officer, after reviewing the written explanation furnished pursuant to paragraph (f)(1) of this clause, or any other available information pertaining to the validity of an asserted restriction, determines that the asserted restriction has--

(i) Not been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, denying the validity of the asserted restriction; or

(ii) Been justified, the Contracting Officer shall issue promptly a final decision, in accordance with the Disputes clause of this contract, validating the asserted restriction.

(7) A Contractor receiving challenges to the same asserted restriction(s) from more than one Contracting Officer shall notify each Contracting Officer of the other challenges. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer who initiated the first in time unanswered challenge, after consultation with the other Contracting Officers who have challenged the restrictions and the Contractor, shall formulate and distribute a schedule that provides the contractor a reasonable opportunity for responding to each challenge.

(g) Contractor appeal--Government obligation. (1) The Government agrees that, notwithstanding a Contracting Officer's final decision denying the validity of an asserted restriction and except as provided in paragraph (g)(3) of this clause, it will honor the asserted restriction--

(i) For a period of ninety (90) days from the date of the Contracting Officer's final decision to allow the Contractor to appeal to the appropriate Board of Contract Appeals or to file suit in an appropriate court;

(ii) For a period of one year from the date of the Contracting Officer's final decision if, within the first ninety (90) days following the Contracting Officer's final decision, the Contractor has provided notice of an intent to file suit in an appropriate court; or

(iii) Until final disposition by the appropriate Board of Contract Appeals or court of competent jurisdiction, if the Contractor has: (A) appealed to the Board of Contract Appeals or filed suit in an appropriate court within ninety (90) days; or (B) submitted, within ninety (90) days, a notice of intent to file suit in an appropriate court and filed suit within one year.

(2) The Contractor agrees that the Government may strike, correct, or ignore the restrictive markings if the Contractor fails to--

(i) Appeal to a Board of Contract Appeals within ninety (90) days from the date of the Contracting Officer's final decision;

(ii) File suit in an appropriate court within ninety (90) days from such date; or

(iii) File suit within one year after the date of the Contracting Officer's final decision if the Contractor had provided notice of intent to file suit within ninety (90) days following the date of the Contracting Officer's final decision.

(3) The agency head, on a nondelegable basis, may determine that urgent or compelling circumstances do not permit awaiting the filing of suit in an appropriate court, or the rendering of a decision by a court of competent jurisdiction or Board of Contract Appeals. In that event, the agency head shall notify the Contractor of the urgent or compelling circumstances. Notwithstanding paragraph (g)(1) of this clause, the Contractor agrees that the agency may use, modify, reproduce, release, perform, display, or disclose computer software marked with (i) government purpose legends for any purpose, and authorize others to do so; or (ii) restricted or special license rights for government purposes only. The Government agrees not to release or disclose such software unless, prior to release or disclosure, the intended recipient is subject to the use and non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS), or is a Government contractor receiving access to the software for performance of a Government contract that contains the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. The agency head's determination may be made at any time after the date of the Contracting Officer's final decision and shall not affect the Contractor's

right to damages against the United States, or other relief provided by law, if its asserted restrictions are ultimately upheld.

(h) Final disposition of appeal or suit. If the Contractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is:

(1) Sustained--

(i) Any restrictive marking on such computer software shall be struck or corrected at the contractor's expense or ignored; and

(ii) If the asserted restriction is found not to be substantially justified, the Contractor shall be liable to the Government for payment of the cost to the Government of reviewing the asserted restriction and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the restriction, unless special circumstances would make such payment unjust.

(2) Not sustained--

(i) The Government shall be bound by the asserted restriction; and

(ii) If the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the Contractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor in defending the restriction.

(i) Flowdown. The Contractor shall insert this clause in all contracts, purchase orders, and other similar instruments with its subcontractors or suppliers, at any tier, who will be furnishing computer software to the Government in the performance of this contract. The clause may not be altered other than to identify the appropriate parties.

(End of clause)

252.227-7022 GOVERNMENT RIGHTS (UNLIMITED) (MAR 1979)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

252.227-7023 DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT. (MAR 1979)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under 17 U.S.C. 201(b). With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three (3) years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

252.227-7024 NOTICE AND APPROVAL OF RESTRICTED DESIGNS (APR 1984)

In the performance of this contract, the Contractor shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer, the Contractor shall not produce a design or specification that requires in this construction work the use of structures, products, materials, construction equipment, or processes that are known by the Contractor to be available only from a sole source. The Contractor shall promptly report any such design or specification to the Contracting Officer and give the reason why it is considered necessary to so restrict the design or specification.

(End of clause)

252.227-7025 LIMITATIONS ON THE USE OR DISCLOSURE OF GOVERNMENT-FURNISHED INFORMATION MARKED WITH RESTRICTIVE LEGENDS. (JUN 1995)

(a)(1) For contracts requiring the delivery of technical data, the terms "limited rights" and "Government purpose rights" are defined in the Rights in Technical Data--Noncommercial Items clause of this contract.

(2) For contracts that do not require the delivery of technical data, the terms "government purpose rights" and "restricted rights" are defined in the Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation clause of this contract.

(3) For Small Business Innovative Research program contracts, the terms "limited rights" and "restricted rights" are defined in the Rights in Noncommercial Technical Data and Computer Software--Small Business Innovative Research (SBIR) Program clause of this contract.

(b) Technical data or computer software provided to the Contractor as Government furnished information (GFI) under this contract may be subject to restrictions on use, modification, reproduction, release, performance, display, or further disclosure.

(1) GFI marked with limited or restricted rights legends. The Contractor shall use, modify, reproduce, perform, or display technical data received from the Government with limited rights legends or computer software received with restricted rights legends only in the performance of this contract. The Contractor shall not, without the express written permission of the party whose name appears in the legend, release or disclose such data or software to any person.

(2) GFI marked with government purpose rights legends. The Contractor shall use technical data or computer software received from the Government with government purpose rights legends for government purposes only. The Contractor shall not, without the express written permission of the party whose name appears in the restrictive legend, use, modify, reproduce, release, perform, or display such data or software for any commercial purpose or disclose such data or software to a person other than its subcontractors, suppliers, or prospective subcontractors or suppliers, who require the data or software to submit offers for, or perform, contracts under this contract. Prior to disclosing the data or software, the Contractor shall require the persons to whom disclosure will be made to complete and sign the non-disclosure agreement at 227.7103-7 of the Defense Federal Acquisition Regulation Supplement (DFARS).

(3) GFI marked with specially negotiated license rights legends. The Contractor shall use, modify, reproduce, release, perform, or display technical data or computer software received from the Government with specially negotiated license legends only as permitted in the license. Such data or software may not be released or disclosed to other persons unless permitted by the license and, prior to release or disclosure, the intended recipient has completed the non-disclosure agreement at DFARS 227.7103-7. The Contractor shall modify paragraph (1)(c) of the non-disclosure agreement to reflect the recipient's obligations regarding use, modification, reproduction, release, performance, display, and disclosure of the data or software.

(c) Indemnification and creation of third party beneficiary rights. The Contractor agrees--

(1) To indemnify and hold harmless the Government, its agents, and employees from every claim or liability, including attorneys fees, court costs, and expenses, arising out of, or in any way related to, the misuse or unauthorized modification, reproduction, release, performance, display, or disclosure of technical data or computer software received from the Government with restrictive legends by the Contractor or any person to whom the Contractor has released or disclosed such data or software; and

k. That the party whose name appears on the restrictive legend, in addition to any other rights it may have, is a third party beneficiary who has the right of direct action against the Contractor, or any person to whom the Contractor has released or disclosed such data or software, for the unauthorized duplication, release, or disclosure of technical data or computer software subject to restrictive legends.

(End of clause)

252.227-7026 DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE
(APR 1988)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date Contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

252.227-7027 DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE
(APR 1988)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software generated in the performance of this contract or any subcontract hereunder. When the technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver the technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

252.227-7030 TECHNICAL DATA--WITHHOLDING OF PAYMENT (MAR 2000)

(a) If technical data specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not identified in the list described in the clause at 252.227-7013(e)(2) or 252.227-7018(e)(2) of this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

252.227-7036 DECLARATION OF TECHNICAL DATA CONFORMITY (JAN 1997)

All technical data delivered under this contract shall be accompanied by the following written declaration:

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Contract No. _____ is complete, accurate, and complies with all requirements of the contract.

Date _____

Name and Title of Authorized Official _____

(End of clause)

252.227-7037 VALIDATION OF RESTRICTIVE MARKINGS ON TECHNICAL DATA. (SEP 1999)

(a) Definitions. The terms used in this clause are defined in the Rights in Technical Data--Noncommercial Items clause of this contract.

(b) Contracts for commercial items--presumption of development at private expense. Under a contract for a commercial item, component, or process, the Department of Defense shall presume that a Contractor's asserted use or release restrictions are justified on the basis that the item, component, or process was developed exclusively at private expense. The Department shall not challenge such assertions unless information the Department provides demonstrates that the item, component, or process was not developed exclusively at private expense.

(c) Justification. The Contractor or subcontractor at any tier is responsible for maintaining records sufficient to justify the validity of its markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract. Except under contracts for commercial items, the Contractor or subcontractor shall be prepared to furnish to the Contracting Officer a written justification for such restrictive markings in response to a challenge under paragraph (e) of this clause.

(d) Prechallenge request for information. (1) The Contracting Officer may request the Contractor or subcontractor to furnish a written explanation for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. If, upon review of the explanation submitted, the Contracting Officer remains unable to ascertain the basis of the restrictive marking, the Contracting Officer may further request the Contractor or subcontractor to furnish additional information in the records of, or otherwise in the possession of or reasonably available to, the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or to be delivered under the contract or subcontract (e.g., a statement of facts accompanied with supporting documentation). The Contractor or subcontractor shall submit such written data as requested by the Contracting Officer within the time required or such longer period as may be mutually agreed.

(2) If the Contracting Officer, after reviewing the written data furnished pursuant to paragraph (d)(1) of this clause, or any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer shall follow the procedures in paragraph (e) of this clause.

(3) If the Contractor or subcontractor fails to respond to the Contracting Officer's request for information under paragraph (d)(1) of this clause, and the Contracting Officer determines that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the technical data relates, the Contracting Officer may challenge the validity of the marking as described in paragraph (e) of this clause.

(e) Challenge.

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. Such challenge shall--

(i) State the specific grounds for challenging the asserted restriction;

(ii) Require a response within sixty (60) days justifying and providing sufficient evidence as to the current validity of the asserted restriction;

(iii) State that a DoD Contracting Officer's final decision, issued pursuant to paragraph (g) of this clause, sustaining the validity of a restrictive marking identical to the asserted restriction, within the three-year period preceding the challenge, shall serve as justification for the asserted restriction if the validated restriction was asserted by the same Contractor or subcontractor (or any licensee of such Contractor or subcontractor) to which such notice is being provided; and

(iv) State that failure to respond to the challenge notice may result in issuance of a final decision pursuant to paragraph (f) of this clause.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601, et seq.), and shall be certified in the form prescribed at 33.207 of the Federal Acquisition Regulation, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute a schedule for responding to each of the challenge notices to all interested parties. The schedule shall afford the Contractor or subcontractor an opportunity to respond to each challenge notice. All parties will be bound by this schedule.

(f) Final decision when Contractor or subcontractor fails to respond. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, other than a failure to respond under a contract for commercial items, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract pertaining to the validity of the asserted restriction. This final decision shall be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2) (ii) through (iv) of this clause.

(g) Final decision when Contractor or subcontractor responds.

(1) if the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. This final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking of a period of ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under paragraph (g)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings, and the failure of the Contractor or subcontractor to take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under paragraph (g)(2)(i) of this clause. The Government will no longer be bound, and the Contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings, if the Contractor or subcontractor fails to file its suit within one (1) year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or

compelling circumstances will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that urgent or compelling circumstances will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may authorize release or disclosure of the technical data. Such agency determination may be made at any time after issuance of the final decision and will not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(h) Final disposition of appeal or suit. (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained--

(i) The restrictive marking on the technical data shall be cancelled, corrected or ignored; and

(ii) If the restrictive marking is found not to be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained--

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(i) Duration of right to challenge. The Government may review the validity of any restriction on technical data, delivered or to be delivered under a contract, asserted by the Contractor or subcontractor. During the period within three (3) years of final payment on a contract or within three (3) years of delivery of the technical data to the Government, whichever is later, the Contracting Officer may review and make a written determination to challenge the restriction. The Government may, however, challenge a restriction on the release, disclosure or use of technical data at any time if such technical data--

(1) Is publicly available;

(2) Has been furnished to the United States without restriction; or

(3) Has been otherwise made available without restriction. Only the Contracting Officer's final decision resolving a formal challenge by sustaining the validity of a restrictive marking constitutes "validation" as addressed in 10 U.S.C. 2321.

(j) Decision not to challenge. A decision by the Government, or a determination by the Contracting Officer, to not challenge the restrictive marking or asserted restriction shall not constitute "validation."

(k) Privity of contract. The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(l) Flowdown. The Contractor or subcontractor agrees to insert this clause in contractual instruments with its subcontractors or suppliers at any tier requiring the delivery of technical data, except contractual instruments for commercial items or commercial components.

(End of clause)

252.229-7002 CUSTOMS EXEMPTIONS (GERMANY) (JUNE 1997)

Imported products required for the direct benefit of the United States Forces are authorized to be acquired duty-free by the Contractor in accordance with the provisions of the Agreement Between the United States of America and Germany Concerning Tax Relief to be Accorded by Germany to United States Expenditures in the Interest of Common Defense.

(End of clause)

252.229-7003 TAX EXEMPTIONS (ITALY) (JAN 2002)

(a) The Contractor represents that the contract price, including the prices in subcontracts awarded under this contract, does not include taxes from which the United States Government is exempt.

(b) The United States Government is exempt from payment of Imposta Valore Aggiunto (IVA) tax in accordance with Article 72 of the IVA implementing decree on all supplies and services sold to United States Military Commands in Italy.

(1) The Contractor shall include the following information on invoices submitted to the United States Government:

(i) The contract number.

(ii) The IVA tax exemption claimed pursuant to Article 72 of Decree Law 633, dated October 26, 1972.

(iii) The following fiscal code(s): (Contracting Officer must insert the applicable fiscal code(s) for military activities within Italy: 80028250241 for Army, 80156020630 for Navy, or 91000190933 for Air Force) .

(2)(i) Upon receipt of the invoice, the paying office will include the following certification on one copy of the invoice:

“I certify that this invoice is true and correct and reflects expenditures made in Italy for the Common Defense by the United States Government pursuant to international agreements. The amount to be paid does not include the IVA tax, because this transaction is not subject to the tax in accordance with Article 72 of Decree Law 633, dated October 26, 1972.” An authorized United States Government official will sign the copy of the invoice containing this certification.

(ii) The paying office will return the certified copy together with payment to the Contractor. The payment will not include the amount of the IVA tax.

(iii) The Contractor shall retain the certified copy to substantiate non-payment of the IVA tax.

(3) The Contractor may address questions regarding the IVA tax to the Ministry of Finance, IVA Office, Rome (06) 520741.

(c) In addition to the IVA tax, purchases by the United States Forces in Italy are exempt from the following taxes:

(1) Imposta di Fabbricazione (Production Tax for Petroleum Products).

(2) Imposta di Consumo (Consumption Tax for Electrical Power).

(3) Dazi Doganali (Customs Duties).

(4) Tassa di Sbarco e d'Imbarco sulle Merci Transportate per Via Aerea e per Via Maritima (Port Fees).

(5) Tassa de Circolazione sui Veicoli (Vehicle Circulation Tax).

(6) Imposta di Registro (Registration Tax).

(7) Imposta di Bollo (Stamp Tax).

(End of clause)

252.229-7004 STATUS OF CONTRACTOR AS A DIRECTOR CONTRACT (SPAIN) (JUN 1997)

(a) "Direct Contractor," as used in this clause, means an individual, company, or entity with whom an agency of the United States Department of Defense has executed a written agreement that allows duty-free import of equipment, materials, and supplies into Spain for the construction, development, maintenance, and operation of Spanish-American installations and facilities.

(b) The Contractor is hereby designated as a Direct Contractor under the provisions of Complementary Agreement 5, articles 11, 14, 15, 17, and 18 of the Agreement on Friendship, Defense and Cooperation between the United States Government and the Kingdom of Spain, dated July 2, 1982. The Agreement relates to contacts to be performed in whole or part in Spain, the provisions of which are hereby incorporated into and made a part of this contract by reference.

(c) The Contractor shall apply to the appropriate Spanish authorities for approval of status as a Direct Contractor in order to complete duty-free import of non-Spanish equipment, materials, and supplies represented as necessary for contract performance by the Contracting Officer. Orders for equipment, materials, and supplies placed prior to official notification of such approval shall be at the Contractor's own risk. The Contractor must submit its documentation in sufficient time to permit processing by the appropriate United States and Spanish Government agencies prior to the arrival of the equipment, material, or supplies in Spain. Seasonal variations in processing times are common, and the Contractor should program its projects accordingly. Any delay or expense arising directly or indirectly from this process shall not excuse untimely performance (except as expressly allowed in other provisions of this contract), constitute a direct or constructive change, or otherwise provide a basis for additional compensation or adjustment of any kind.

(d) To ensure that all duty-free imports are properly accounted for, exported, or disposed of, in accordance with Spanish law, the Contractor shall obtain a written bank letter of guaranty payable to the Treasurer of the United States, or such other authority as may be designated by the Contracting Officer, in the amount set forth in paragraph (g) of this clause, prior to effecting any duty-free imports for the performance of this contract.

(e) If the Contractor fails to obtain the required guaranty, the Contractor agrees that the Contracting Officer may withhold a portion of the contract payments in order to establish a fund in the amount set forth in paragraph (g) of this clause. The fund shall be used for the payment of import taxes in the event that the Contractor fails to properly account for, export, or dispose of equipment, materials, or supplies imported on a duty-free basis.

(f) The amount of the bank letter of guaranty or size of the fund required under paragraph (d) or (e) of this clause normally shall be 5 percent of the contract value. However, if the Contractor demonstrates to the Contracting Officer's satisfaction that the amount retained by the United States Government or guaranteed by the bank is excessive, the amount shall be reduced to an amount commensurate with contingent import tax and duty-free liability. This bank guaranty or fund shall not be released to the Contractor until the Spanish General Directorate of Customs verifies the accounting, export, or disposition of the equipment, material, or supplies imported on a duty-free basis.

(g) The amount required under paragraph (d), (e), or (f) of this clause is (Contracting Officer insert amount at time of contract award).

(h) The Contractor agrees to insert the provisions of this clause, including this paragraph (h), in all subcontracts.

(End of clause)

252.229-7005 TAX EXEMPTIONS (SPAIN) (JUN 1997)

(a) The Contractor represents that the contract prices, including subcontract prices, do not include the taxes identified herein, or any other taxes from which the United States Government is exempt.

(b) In accordance with tax relief agreements between the United States Government and the Spanish Government, and because the incumbent contract arises from the activities of the United States Forces in Spain, the contract will be exempt from the following excise, luxury, and transaction taxes:

- (1) Derechos de Aduana (Customs Duties).
- (2) Impuesto de Compensacion a la Importacion (Compensation Tax on Imports).
- (3) Transmisiones Patrimoniales (Property Transfer Tax).
- (4) Impuesto Sobre el Lujo (Luxury Tax).
- (5) Actos Juridicos Documentados (Legal Official Transactions).
- (6) Impuesto Sobre el Trafico de Empresas (Business Trade Tax).
- (7) Impuestos Especiales de Fabricacion (Special Products Tax).
- (8) Impuesto Sobre el Petroleo y Derivados (Tax on Petroleum and its By-Products).
- (9) Impuesto Sobre el Uso de Telefona (Telephone Tax).
- (10) Impuesto General Sobre la Renta de Sociedades y demas Entidades Juridicas (General Corporation Income Tax).
- (11) Impuesto Industrial (Industrial Tax).
- (12) Impuesto de Rentas Sobre el Capital (Capital Gains Tax).

- (13) Plus Vailia (Increase on Real Property).
- (14) Contribucion Territorial Urbana (Metropolitan Real Estate Tax).
- (15) Contribucion Territorial Rustica y Pecuaria (Farmland Real Estate Tax).
- (16) Impuestos de la Diputacion (County Service Charges).
- (17) Impuestos Municipal y Tasas Parafiscales (Municipal Tax and Charges).
- (End of clause)

252.229-7006 VALUE ADDED TAX EXCLUSION (UNITED KINGDOM) (JUN 1997)

The supplies or services identified in this contract are to be delivered at a price exclusive of value added tax under arrangements between the appropriate United States authorities and Her Majesty's Customs and Excise (Reference Priv 46/7). By executing this contract, the Contracting Officer certifies that these supplies or services are being purchased for United States Government official purposes only.

(End of clause)

252.229-7008 RELIEF FROM IMPORT DUTY (UNITED KINGDOM) (JUNE 1997)

Any import dutiable articles, components, or raw materials supplied to the United States Government under this contract shall be exclusive of any United Kingdom import duties. Any imported items supplied for which import duty already has been paid will be supplied at a price exclusive of the amount of import duty paid. The Contractor is advised to contact Her Majesty's (HM) Customs and Excise to obtain a refund upon completion of the contract (Reference HM Customs and Excise Notice No. 431, February 1973, entitled "Relief from Customs Duty and/or Value Added Tax on United States Government Expenditures in the United Kingdom").

(End of clause)

252.233-7001 CHOICE OF LAW (OVERSEAS) (JUNE 1997)

This contract shall be construed and interpreted in accordance with the substantive laws of the United States of America. By the execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of local national courts where this contract is performed and agrees to accept the exclusive jurisdiction of the United States Armed Services Board of Contract Appeals and the United States Court of Federal Claims for hearing and determination of any and all disputes that may arise under the Disputes clause of this contract.

(End of clause)

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

- (a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

252.236-7001 CONTRACT DRAWINGS, MAPS, AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File Drawing No.

(End of clause)

252.236-7009 OPTION FOR SUPERVISION AND INSPECTION SERVICES. (DEC 1991)

(a) The Government may --

(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under Appendix A of this contract; and

(2) Exercise its option, by written order, at any time prior to six months after satisfactory completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

252.236-7012 MILITARY CONSTRUCTION ON KWAJALEIN ATOLL--EVALUATION PREFERENCE (MAR 1998)

(a) Definitions. As used in this provision--

(1) Marshallese firm means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that--

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) United States firm means a firm incorporated in the United States that complies with the following:

(i) The corporate headquarters are in the United States;

(ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(iii) The firm employs United States citizens in key management positions.

(b) Evaluation. Offers from firms that do not qualify as United States firms or Marshallese firms will be evaluated by adding 20 percent to the offer, unless application of the factor would not result in award to a United States firm.

(c) Status. The offeror is _____ a United States firm; _____ a Marshallese firm; _____ Other.

252.242-7004 MATERIAL MANAGEMENT AND ACCOUNTING SYSTEM (DEC 2000)

(a) Definitions. As used in this clause--

(1) Material management and accounting system (MMAS) means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) Valid time-phased requirements means material that is--

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc.; and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) "Contractor" means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) General. The Contractor shall--

(1) Maintain an MMAS that--

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) Disclosure and maintenance requirements. The Contractor shall--

(1) Have policies, procedures, and operating instructions that adequately described its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO), upon request, the results of the internal reviews that it has conducted to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO at least 30 days prior to implementation.

(d) Deficiencies.

(1) If the Contractor receives a report from the ACO that identifies any deficiencies in its MMAS, the Contractor shall respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall--

(A) Within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its agreement in writing; and

(B) Within 60 days (or such other date as may be mutually agreed to by the ACO and the Contractor), correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days (or such other date as may be mutually agreed to by the ACO and the Contractor), state its rationale for each area of disagreement.

(2) The ACO will evaluate the Contractor's response and will notify the Contractor in writing of the--

(i) Determination concerning any remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(3) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503-6) and/or disallow costs on vouchers (in accordance with FAR 42.803) until the ACO determines that--

(i) The deficiencies are corrected; or

(ii) The amount of the impact is immaterial.

(e) MMAS standards. The MMAS shall have adequate internal controls to ensure system and data integrity, and shall--

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that--

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that--

(i) There is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411-50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The "loan/pay-back technique" means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure--

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (e)(2) and (7) of this clause) to ensure that--

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Regardless of the provisions of FAR 45.505-3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (e)(1) through (8) of this clause. Government-furnished material shall not be--

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal reviews to ensure compliance with established policies and procedures.

(End of clause)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to---

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

252.246-7001 WARRANTY OF DATA (DEC 1991)

(a) Definition. "Technical data" has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) Warranty. Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) Contractor Notification. The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) Remedies. The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may--

(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may - within a reasonable time of the refusal or failure--

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

252.251-7000 ORDERING FROM GOVERNMENT SUPPLY SOURCES (MAY 1995)

(a) When placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules, the Contractor shall follow the terms of the applicable schedule and authorization. Include in each order:

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor).

(2) The following statement:

This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

(3) The completed address(es) to which the Contractor's mail, freight, and billing documents are to be directed.

(b) If a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor under an agency authorization, the Contractor shall report the circumstances to the General Services Administration, FFN, Washington, DC 20406, with a copy to the authorizing office.

(c) When placing orders under nonmandatory schedule contracts and requirements contracts, issued by the General Services Administration (GSA) Office of Information Resources Management, for automated data processing equipment, software and maintenance, communications equipment and supplies, and teleprocessing services, the Contractor shall follow the terms of the applicable contract and the procedures in paragraph (a) of this clause.

(d) When placing orders for Government stock, the Contractor shall --

(1) Comply with the requirements of the Contracting Officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the GSA Form 1948-A, Retail Services Shopping Plate, when ordering from GSA Self-Service Stores;

(3) Order only those items required in the performance of Government contracts; and

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice (see also Defense Federal Acquisition Regulation Supplement (DFARS) 251.105). For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) Only the Contractor may request authorization for subcontractor use of Government supply sources. The Contracting Officer will not grant authorizations for subcontractor use without approval of the Contractor.

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address [include point of contact and telephone number]:

Government Remittance Address [include point of contact and telephone number]

:

(End of clause)

Section J - List of Documents, Exhibits and Other Attachments

ATTACHMENTS/EXHIBITSSECTION JLIST OF ATTACHMENTS

<u>EXHIBIT NUMBER</u>	<u>TITLE</u>
<u>A</u>	<u>UMCS Contract Data Requirement List, DD Form 1423</u>
<u>B</u>	<u>FAS Contract Data Requirement List, DD Form 1423</u>
<u>C</u>	<u>SCADA Contract Data Requirements List, DD Form 1423</u>
<u>D</u>	<u>ESS Contract Data Requirement List, DD Form 1423</u>

ATTACHMENT

<u>NUMBER</u>	<u>TITLE</u>
1.	<u>Abbreviations, Symbols, Installation, And Standard Installation Details</u>
2.	<u>SECTION 01011 Contract Milestones with Payment Schedule</u>
3.	<u>SECTION 13451A Power Monitoring System</u>
4.	<u>SECTION 13720A Electronic Security System</u>
5.	<u>SECTION 13801 Utility Monitoring and Control System</u>
6.	<u>SECTION 13851A Fire Detection and Alarm System, Addressable</u>
7.	<u>SECTION 16751A Closed Circuit Television Systems</u>
8.	<u>SECTION 16768A Fiber Optic Data Transmission System</u>
9.	<u>SECTION 16792A Wire Line Data Transmission System</u>
10.	<u>SECTION 16799 Supervisory Control and Data Acquisition (SCADA) System</u>
11.	<u>UMCS SAMPLE TASK ORDER</u>
12.	<u>Past Performance Survey Form</u>
13.	<u>UMCS/EMCS Experience Reporting Forms</u>
14.	<u>ESS Standard Contractor Experience Reporting Forms and Instructions for Preparation</u>
15.	<u>APPENDIX DD-Subcontracting Plan Evaluation Guide</u>
16.	<u>MIL-STD-2202A, Energy Monitoring and Control System Factory Tests</u>
17.	<u>MIL-STD-2203A, Energy Monitoring and Control Systems Performance Verification and Endurance Tests</u>
18.	<u>DD254, Contract Security Classification Specification</u>
19.	<u>UMCS II ESSCLINS.xls Excel Spreadsheet</u>
20.	<u>UMCS II FASCLINS.xls Excel Spreadsheet</u>
21.	<u>UMCS II SCADACLINS.xls Excel Spreadsheet</u>
22.	<u>UMCS II UMCSCLINS.xls Excel Spreadsheet</u>
23.	<u>Davis Bacon Wage Rates for Madison County Alabama</u>
24.	<u>Service Contract Act Wage Rates for Madison County Alabama</u>
25.	<u>Software Licensing Agreement</u>

SPECIFICATIONS AVAILABLE AT THE FOLLOWING WEBSITE: <http://www.hnd.usace.army.mil/techinfo>

26. SECTION 01451A Contractor's Quality Control
27. SECTION 01560 Environmental Protection
28. SECTION 01720 As-Built Drawings
29. SECTION 02222 Excavation, Trenching, and Backfill for Utilities Systems
30. SECTION 02553A Heat Distribution Systems in Concrete Trenches
31. SECTION 02553N Exterior Underground Steam Distribution System
32. SECTION 02554A Aboveground Heat Distribution System
33. SECTION 02554N Exterior Aboveground Steam Distribution

34. [SECTION 02555A Prefabricated Underground Heating/Cooling Distribution System](#)
35. [SECTION 02556N Exterior Buried Pumped Condensate Return](#)
36. [SECTION 02980A Patching of Rigid Pavements](#)
37. [SECTION 03300 Cast-in-Place Concrete](#)
38. [SECTION 04653 Penetration Repair](#)
39. [SECTION 07840A Firestopping](#)
40. [SECTION 07900A Joint Sealing](#)
41. [SECTION 11211A Pumps: Water, Centrifugal](#)
42. [SECTION 11212A Pumps: Water, Vertical Turbine](#)
43. [SECTION 11242A Chemical Feed Systems](#)
44. [SECTION 11243A Chemical Treatment of Water for Mechanical Systems](#)
45. [SECTION 13038 Cold-Storage Rooms \(Prefabricated Panel Type\)](#)
46. [SECTION 13080 Seismic Protection for Miscellaneous Equipment](#)
47. [SECTION 15050N Basic Mechanical Material and Methods](#)
48. [SECTION 15070A Seismic Protection for Mechanical Equipment](#)
49. [SECTION 15070N Mechanical Sound, Vibration, and Seismic Control](#)
50. [SECTION 15080A Thermal Insulation for Mechanical Systems](#)
51. [SECTION 15080N Mechanical Insulation](#)
52. [SECTION 15081N Exterior Piping Insulation](#)
53. [SECTION 15131A Vertical Pumps, Axial-Flow and Mixed-Flow Impeller-Type](#)
54. [SECTION 15132A Submersible Pump, Axial-flow and Mixed-Flow Type](#)
55. [SECTION 15133A Diesel/Natural Gas Fueled Engine Pump Drives](#)
56. [SECTION 15181A Chilled and Condenser Water Piping and Accessories](#)
57. [SECTION 15181N Chilled, Condenser, or Dual Service Water Piping](#)
58. [SECTION 15182A Refrigerant Piping](#)
59. [SECTION 15182N Refrigerant Piping](#)
60. [SECTION 15183N Steam System and Terminal Units](#)
61. [SECTION 15184N \(High\) \(Medium\) Temperature Water System Within Buildings](#)
62. [SECTION 15185N Low Temperature Water \(LTW\) Heating System](#)
63. [SECTION 15211N Low Pressure Compressed Air Piping \(Non-Breathing Air Type\)](#)
64. [SECTION 15213N Large Centrifugal Air Compressors \(Over 200 HP\)](#)
65. [SECTION 15214N Large Nonlubricated Reciprocating Air Compressors \(Over 300 HP\)](#)
66. [SECTION 15215N Nonlubricated Rotary Screw Air Compressors \(100 HP and Larger\)](#)
67. [SECTION 15216N Welding Pressure Piping](#)
68. [SECTION 15500A Desiccant Cooling Systems](#)
69. [SECTION 15511N Water-Tube Boilers, Oil/Gas or Oil](#)
70. [SECTION 15514N Low Pressure Water Heating Boilers \(Under 800,000 BTU/HR Output\)](#)
71. [SECTION 15515N Low Pressure Water Heating Boilers \(Over 800,000 BTU/HR Output\)](#)
72. [SECTION 15516N Steam Boilers and Equipment \(500,000 – 18,000,000 BTU/HR\)](#)
73. [SECTION 15517N Steam Boilers and Equipment \(18,000,000 – 60,000,000 BTU/HR\)](#)
74. [SECTION 15532N Warm Air Heating Systems](#)
75. [SECTION 15556A Forced Hot Water Heating Systems Using Water and Steam Heat Exchangers](#)
76. [SECTION 15559A Central Steam-Generating System, Coal-Fired](#)
77. [SECTION 15561A Central Steam Generating System-Combination Gas and Oil Fired](#)
78. [SECTION 15562A Heating and Utilities Systems, Central Steam](#)
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80. [SECTION 15566A Warm Air Heating Systems](#)
81. [SECTION 15569A Water and Steam Heating: Oil, Gas or Both; Up to 20 MBTUH](#)
82. [SECTION 15601N Central Refrigeration Equipment for Air Conditioning](#)
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95. [SECTION 15751N Desiccant Dehumidification Equipment](#)
96. [SECTION 15760N Terminal Heating and Cooling Units](#)
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99. [SECTION 15810N Ductwork and Ductwork Accessories](#)
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108. [SECTION 15895A Air Supply, Distribution, Ventilation, and Exhaust System](#)
109. [SECTION 15901N Space Temperature Control Systems](#)
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111. [SECTION 15950A Heating, Ventilating and Air Conditioning \(HVAC\) Control Systems](#)
112. [SECTION 15950N HVAC Testing/Adjusting/Balancing](#)
113. [SECTION 15951A Direct Digital Control for HVAC](#)
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115. [SECTION 15990A Testing, Adjusting, and Balancing of HVAC Systems](#)
116. [SECTION 15995A Commissioning of HVAC Systems](#)
117. [SECTION 16261N Variable Frequency Drive Systems Under 600 Volts](#)
118. [SECTION 16262N Uninterruptible Power Supply \(UPS\) System](#)
119. [SECTION 16370A Electrical Distribution System, Aerial](#)
120. [SECTION 16375A Electrical Distribution System, Underground](#)
121. [SECTION 16415A Electrical Work, Interior](#)
122. [SECTION 16528A Exterior Lighting Including Security and CCTV Applications](#)
123. [SECTION 16794A Coaxial Cable Data Transmission Media](#)
124. [SECTION 16797A One-Way FM Radio Control/Utility](#)
125. [SECTION 16798A Two-Way Radio Data Transmission System](#)

[TECHNICAL INSTRUCTIONS \(TI\) AVAILABLE AT THE FOLLOWING WEBSITE:](#)

<http://www.hnd.usace.army.mil/techinfo>

126. [SECTION 800-01 Design Criteria](#)
127. [SECTION 809-04 Seismic Design for Buildings](#)
128. [SECTION 810-10 Mechanical Design – Heating, Ventilating, and Air-Conditioning](#)
129. [SECTION 810-11 Heating, Ventilating, and Air-Conditioning \(HVAC\) Control Systems](#)
130. [SECTION 810-32 Heating and Cooling Distribution Systems](#)
131. [SECTION 811-12 Utility Monitoring and Control Systems](#)

[ENGINEERING TECHNICAL LETTERS \(ETL\) AVAILABLE AT THE FOLLOWING WEBSITE:](#)

<http://www.hnd.usace.army.mil/techinfo>

- 132. [SECTION 1110-1-180 Humidity and Corrosion Control for Natatoriums](#)
- 133. [SECTION 1110-1-181 Procurement of Energy Efficient Liquid Chillers](#)
- 134. [SECTION 1110-3-455 Humidity Control for Barracks and Dormitories in Humid Areas](#)
- 135. [SECTION 1110-3-491 Sustainable Design for Military Facilities](#)

UNIFIED FACILITIES CRITERIA AVAILABLE AT THE FOLLOWING WEBSITE:

<http://www.hnd/usace.army.mil/techinfo>

- 136. [SECTION 3-430-11 Design: Boiler Control Systems](#)
- 137. [SECTION 3-440-01 Design: Active Solar Preheat Systems](#)

TECHNICAL MANUALS (TM) AVAILABLE AT THE FOLLOWING WEBSITE:

<http://www.hnd.usace.army.mil/techinfo>

- 138. [SECTION 5-560 Central Boiler Plants](#)
- 139. [SECTION 5-810-1 Mechanical Design Heating, Ventilating, and Air-Conditioning](#)
- 140. [SECTION 5-810-2 High Temperature Water Heating Systems](#)
- 141. [SECTION 5-810-15 Central Steam Boiler Plants](#)
- 142. [SECTION 5-815-3 Heating, Ventilating, and Air-Conditioning \(HVAC\) Control Systems](#)

TECHNICAL MANUAL (TM) AVAILABLE AT THE FOLLOWING WEBSITE: <http://www.afccc.af.mil>

- 143. [SECTION 5-785 Engineering Weather Data](#)

ENGINEER MANUAL (EM) AVAILABLE AT THE FOLLOWING WEBSITE:

<http://www.hnd.usace.army.mil/techinfo> click on [Engineer Publications](#), [Engineer Manuals](#), [EM 385-1-1](#).

- 144. [Engineer Manual EM 385-1-1](#):

SOFTWARE LICENSING AGREEMENT

Attachment 25

Software Licensing Agreement.

LICENSE AGREEMENT TO PERMIT DISCLOSURE OF PROPRIETARY DATA

(The terms and conditions of the clause in the Department of Defense (DOD) FAR 252.227-7013 (c)(1)(I), "Rights in Technical Data and Computer Software", in effect on the date of this contract are applicable to this contract as well as the rights set forth in the following agreement.)

a. Agreement. The contractor grants to the government a license covering all or part of the contractor's technical data and computer software delivered under this contract on the following terms and conditions:

- (i) The Government has the right to disclose all or part of the contractor's technical data and computer software delivered under this contract to other organizations designated by the Contracting Officer solely for the purpose of performance under this the Government contract for modification, expansion, or operation, including maintenance and service at the location specified in the each delivery order.
- (ii) The technical data and computer software covered by the license include computer software implemented in hardware form, i.e., so-called firmware, as well as conventional computer software.

(iii) The technical data and computer software covered by the license include technical data and computer software first produced under this contract as well as the technical data and computer software developed at the contractor's private expense. However, technical data and computer software furnished with unlimited rights are not subject to this license.

- b. The license shall become effective upon receipt by the contractor of the Government's final payment.
- c. Nothing contained in this agreement shall constitute, nor shall the contractor be required to include in any license granted, any commitment which may be construed as a warranty or representation as to the scope of validity of any contractor patent or that anything made or sold by the Government or licenses will be free from infringement of patents held by third parties.
- d. The provisions of this agreement shall be incorporated in all subcontracts, including purchase orders associated with this contract unless the subcontract or purchase order is for the supply and or service which the subcontractor or vendor sells or leases to the public or industry in the general course of business without any restrictions on use attached thereto.

The term "organization" for the purpose of this agreement, is defined as any Government, non-profit or business entity, including but not limited to corporation, partnerships, individuals, State and Local Governments, educational, and non profit organizations.

- f. In the case of technical data and computer software utilized in the monitoring and or leased facilities, use of technical data and computer software under license shall be geographically restricted to use at that specific installation site.